

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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THE CHESTER COUNTY HOSPITAL

v.

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INDEPENDENCE BLUE CROSS,  
QCC INSURANCE COMPANY,  
KEYSTONE HEALTH PLAN EAST, and  
KEYSTONE MERCY HEALTH PLAN

---

NO. 02-CV-2746

FILED JAN 24 2003

PROTECTIVE ORDER

This cause having come before the Court upon motion of all parties to the above-captioned action, and the Court having determined that there is good cause therefor, it is

ORDERED that the provisions of this Protective Order ("Order") shall apply to all Litigation Materials, which are defined to include all documents and information produced by any party or persons or entities not a party to this Action in response to any discovery request promulgated under the Federal Rules of Civil Procedure in this Action. Litigation Materials shall also include all documents or information derived from Litigation Materials, all copies, excerpts or summaries thereof, and all deposition and hearing transcripts. The procedures for handling Litigation Materials at the time a summary judgment motion is filed and at the time of trial in this matter are not within the scope of this Order and will be addressed in a future Order of the Court.

1. Pursuant to Fed.R.Civ.P. 26(c)(2) and (7), if, in the course of this litigation, any party or non-party undertakes or is caused to disclose (the "Disclosing Entity") what the Disclosing Entity contends is "confidential information" or "highly confidential information," the

ENTERED

JAN 24 2003

CLERK OF COURT

procedures set forth herein shall be employed and the disclosure thereof shall be subject to this Order, except insofar as a court orders additional or different protections pursuant to a non-party's motion.

**Litigation Materials Eligible For Designation As "Confidential"**  
**And Persons To Whom Such Information May Be Disclosed**

2. For purposes of this Order, the term "confidential information" shall mean any information, or the contents of any document (including copies, transcripts, videos, and computer stored information), (a) which is within one or more of the categories of information described on Exhibit A hereto, (b) which the Disclosing Entity contends is confidential patient or member information, or (c) which counsel for the Disclosing Entity believes in good faith could be used to the detriment of the Disclosing Entity, by any competitor, supplier, purchaser or other relevant industry participants for a competitive advantage outside of this litigation.

3. Confidential information shall not consist of any information which at any time has been: (a) produced, disclosed or made available to the public or otherwise available for public access; and/or (b) disclosed in connection with any governmental public filing or securities offering and which documents or information could not reasonably be assumed to be or have been intended to be kept confidential; provided, however, that confidential compilations of information shall not be deemed to have been so produced or disclosed merely because some or all of the component data have been so produced or disclosed other than in such compilation. Any information that has not been preserved or maintained in a manner calculated to preserve its confidentiality may not be designated as confidential.

4. Counsel for the Disclosing Entity must initially designate documents or information as confidential information prior to actual production of the document or information by placing

the notation "CONFIDENTIAL" on every page of each document so designated or, in the case of confidential information disclosed in a non-paper medium, (e.g., video tape, audio tape, computer disks, etc.), the notation "CONFIDENTIAL" shall be affixed to the outside of the medium or its container. To the extent a person to whom confidential information is disclosed copies, summarizes, or paraphrases the confidential information, or creates any other document from which the confidential information could be derived, the confidential information embodied in those copies, summaries or other documents shall remain confidential and subject to the provisions of this Order. Notwithstanding the provisions of this Protective Order, counsel may, for the purpose of conducting meaningful, court-supervised settlement negotiations, orally inform their clients of their conclusions and the conclusions reached by experts or consultants retained in this matter, provided however, that counsel shall not disclose any highly confidential documents on which any such conclusions may be based in whole or in part.

5. Confidential information may be disclosed only by counsel for a party and only to the following persons:

- a. outside counsel for the parties and such counsel's professional, paraprofessional, secretarial, clerical and support personnel;
- b. in-house counsel employed by the parties, including paralegals and secretarial and clerical personnel of such in-house counsel;
- c. officers, directors or employees of the Disclosing Entity;
- d. authors, addressees, recipients or persons who otherwise can be shown to know the confidential information;
- e. testifying consultants and experts retained by counsel to assist in the preparation and trial of this action, provided that such persons shall be given a copy of this Order, advised that they are bound by it, and sign Exhibit B;



- f. non-testifying consultants and experts retained to assist in the preparation and trial of this action, provided that (1) counsel for the party that desires to make such disclosure believes in good faith that disclosure of confidential information is necessary or appropriate for such preparation; (2) the confidential information is only used in connection with preparation and trial in this case; and (3) the consultants or experts are given a copy of this Order, advised that they are bound by it, and sign Exhibit B.
- g. witnesses at a deposition or pretrial hearing, provided that (1) counsel for the opposing party desiring to use confidential information identifies the confidential information for the witnesses and counsel for the witnesses at least ten (10) business days before the deposition or hearing so that witnesses who would otherwise be precluded from seeing the confidential information by the terms of this Protective Order will have an opportunity to prepare for the deposition or hearing; (2) the confidential information is only used in connection with the preparation and examination of the witnesses; and (3) the witnesses are first provided with a copy of this Order, advised that they are bound by it, and sign Exhibit B.
- h. the Court and any persons employed by it; and
- i. court reporters, including stenographers and video technicians; and copy and computer service personnel for purposes of copying, imaging, or indexing documents.

6. In addition to those persons or entities listed in paragraph 5, each party may select four (4) employees (the "Selected Employees") to whom confidential information may be disclosed. Each party shall provide to all other parties its list of Selected Employees within twenty (20) days of entry of this Protective Order. No confidential information may be shown to the Selected Employees unless they are first provided with a copy of this Order, advised that they are bound by it, and sign Exhibit B.

**Discovery Material Eligible To Be Designated As "Highly Confidential" And Persons To Whom Such Material May Be Disclosed**

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7. For purposes of this Order, the term "highly confidential" information shall mean any information or the contents of any document (including copies, transcripts, videos, and computer stored information) which satisfies the criteria of paragraph 3, and (a) which the Disclosing Entity contends is either proprietary or a trade secret, or (b) which reveals health care provider reimbursement rates or the negotiation of such reimbursement rates with health care providers.

8. Counsel for the Disclosing Entity must initially designate documents or information as highly confidential prior to actual production of the document or information by placing the notation "HIGHLY CONFIDENTIAL - DISTRIBUTION AND COPYING RESTRICTED" on every page of each document so designated or, in the case of highly confidential information disclosed in non-paper medium (e.g., video tape, audio tape, computer discs, etc.), the notation "HIGHLY CONFIDENTIAL - DISTRIBUTION AND COPYING RESTRICTED" shall be affixed to the outside of the medium or its container. To the extent a person, to whom highly confidential information is disclosed, copies (as restricted in paragraph 9), summarizes, or paraphrases the highly confidential information, or creates any other document from which the highly confidential information could be derived, the highly confidential information embodied in those copies, summaries or other documents shall remain highly confidential and subject to the provisions of this Order.

9. A party receiving highly confidential information shall make no more than six (6) copies of the highly confidential information for each law firm requesting it (but no more than twelve (12) copies in total), excluding copies for court filings and for exhibits at

depositions and hearings. Application for relief from this restriction against copying may be made to the Court with notice to counsel so designating the information.

10. Highly confidential information may be disclosed only by counsel for a party and only to the following persons:

- a. outside counsel for the parties who have filed an entry of appearance in this matter and who agree not to represent the Delaware Valley Health Care Council of the Hospital and Health System Association of Pennsylvania, area hospitals (other than Chester County Hospital in the above-captioned case) in the contract negotiations by IBC of health care provider reimbursement rates or health care insurers that compete with defendants in any matter involving health care reimbursement rates for a period of eighteen (18) months from the date they last worked on this matter. This will not preclude such outside counsel from representing health care insurers that compete with defendants in litigation in which such information would be discoverable and otherwise disclosed. This will not preclude such outside counsel from representing area hospitals or insurers that compete with defendants in connection with any audit, investigation, or prosecution initiated by federal or state government. It will also not preclude such outside counsel from representing any insurer that competes with defendants in connection with any dispute or litigation between the insurer and any physicians or physician practice group respecting reimbursement rates.
- b. for defendants: in-house counsel; and, for plaintiff: Paul Vanore (but only the actual hospital reimbursement rates in contracts negotiated by defendants applicable to calendar year 2000 and no other highly confidential information) Mr. Vanore will not participate in negotiations with any of the defendants (hereafter "IBC") in the above-captioned matter respecting the renewal, continuation, or commencement of any contracts with IBC in 2005 ("the 2005 contracts"). Mr. Vanore's duties with respect to the 2005 contracts will be limited to providing Chester County Hospital with his normal financial projections and analyses of proposals made by IBC. Mr. Vanore will also be required to

execute an affidavit in the form of Exhibit B prior to receiving any highly confidential information.

- c. officers, directors or employees of the Disclosing Entity;
- d. authors, addressees, recipients, or persons who otherwise can be shown to know the highly confidential information;
- e. testifying consultants and experts retained by counsel to assist in the preparation and trial of this action, provided that such persons shall be given a copy of this Order, advised that they are bound by it, and sign Exhibit B;
- f. non-testifying consultants and experts retained to assist in the preparation and trial of this action, provided that (1) counsel for the party that desires to make such disclosure believes in good faith that disclosure of highly confidential information is necessary or appropriate for such preparation; (2) the highly confidential information is only used in connection with preparation and trial in this case; and (3) the consultants or experts are given a copy of this Order, advised that they are bound by it, and sign Exhibit B;
- g. witnesses at a deposition or pretrial hearing, provided that (1) counsel for the opposing party desiring to use highly confidential information identifies the highly confidential information for the witnesses and counsel for the witnesses at least ten (10) business days before the deposition or hearing so that witnesses who would otherwise be precluded from seeing the confidential information by the terms of this Protective Order will have an opportunity to prepare for the deposition or hearing; (2) the witnesses are members of the class of persons defined in subparagraphs 10(b), (c), (d) or (e); or (3) counsel believes in good faith that such use is necessary or appropriate; and (4) the highly confidential information is only used in connection with the preparation and examination of the witnesses; and (5) the witnesses are first provided with a copy of this Order, advised they are bound by it, and sign Exhibit B;
- h. the Court and any persons employed by it; and



- i. court reporters, including stenographers and video technicians; and copy and computer service personnel for purposes of copying, imaging, or indexing documents.

#### Filing and Use

11. No party shall submit to the Court any documents or information designated as confidential or highly confidential except in a separate envelope, sealed and labeled with the caption of this case and the notation "Filed Under Seal," together with a motion for leave to file such document or information under seal, which motion shall clearly set forth the need for filing the same. The filing of such a motion shall not constitute an acknowledgement by the moving party of, or a waiver of its right to challenge, the appropriateness of any confidentiality designation made by any other Disclosing Entity. For purposes of setting and meeting deadlines, documents submitted to the Court for filing in the above fashion shall be deemed filed on the day they are delivered to the Clerk of Court.

12. All documents and information designated as "confidential" or "highly confidential" shall be used solely in this case or appeal therefrom, or for any alternative dispute resolution proceeding mutually agreed upon by the parties, and for no other purpose whatsoever.

#### Objections to Confidential or Highly Confidential Designations

13. Any party may contest the designation as confidential or highly confidential of any information or documents by providing written notice to the Disclosing Entity (with a copy thereof to any other party) of the specific designations contested and the specific reasons therefore. The addressee of such notice may, within ten (10) business days after receipt thereof (or such longer period as may be agreed or the Court may order), file a motion for protective order with respect to some or all such information or documents either in this Court or by a non-party in the district court from which the subpoena issued or within the jurisdiction of which

such non-party supplied such information or documents. Unless otherwise agreed in writing between the issuer of the notice and the addressee, failure of the addressee to file such a motion within such time shall be deemed a waiver of the designation.

**Disclosure of Confidential and Highly Confidential  
Information to Non-Testifying Experts and Witnesses**

14. A party wishing to disclose confidential or highly confidential information to the persons specified in paragraph 5(f), or paragraph 10(f), shall give notice to counsel for the Disclosing Entity at least ten (10) business days prior to such disclosure of its intent to use confidential or highly confidential information. Such notice shall include the name of the person to whom disclosure is to be made, the type of information to be disclosed, i.e., confidential or highly confidential information, and sufficient other information to permit the Disclosing Entity to make an informed decision regarding whether to object to such disclosure. A party objecting to such disclosure shall have the burden of persuading the Court that disclosure should not occur and, provided the objection is made with five (5) business days of such notice, the confidential or highly confidential information shall not be disclosed to the person in question until the Court rules on the objection.

15. Witnesses shall not retain or copy confidential or highly confidential information, except (a) non-party witnesses who are shown documents that were marked confidential or highly confidential by the non-party entity they are representing, or (b) witnesses who are the authors, addressees or recipients of confidential or highly confidential information or who otherwise can be shown to know the confidential or highly confidential information.

16. Each non-testifying expert and consultant shall make no more than three (3) copies of confidential or highly confidential information and shall retain confidential or highly confidential information only until the conclusion of their retention in this matter. The

provisions of paragraph 20 (relating to the handling of confidential or highly confidential information at the conclusion of this case) shall apply to non-testifying experts or consultants at the conclusion of their retention in this matter, but shall under no circumstances extend beyond the conclusion of this case.

Witness/Deposition Practice

17. The witness, counsel for the witness, and counsel for any party shall have the right to exclude from oral depositions, other than the deponent and the deponent's counsel, any person who is not authorized by this Order to receive documents or information designated as confidential information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising confidential information.

18. Not later than sixty (60) days after the receipt of a written transcript of such deposition, the witness, counsel for the witness, or counsel for any of the parties in this action may notify counsel for the parties in writing that the deposition transcript, including exhibits, or any portion thereof is confidential or highly confidential as provided by this Order. Unless otherwise agreed, between the time of the deposition and until the end of the sixty (60) day period following receipt of the written transcript of the deposition, the entire transcript shall be deemed highly confidential as provided by this Order.

19. Persons who are shown documents or information designated as confidential or highly confidential at a deposition pursuant to paragraph 5.g. or 10.g. shall be bound to maintain the documents or information in confidence in accordance with the terms of this Order.

Witnesses shall not retain or copy portions of the transcripts of their depositions involving confidential or highly confidential information.



**Confidential or Highly Confidential Information In The  
Possession of Persons That Cease to Be Engaged In This Matter**

20. In the event that any person or party ceases to be engaged in the preparation for trial or trial of this action, such person's or party's access to documents, testimony and information designated as confidential or highly confidential information shall be terminated and they shall immediately return or destroy all confidential or highly confidential information received in this litigation. Said persons may return the confidential or highly confidential information to the attorneys for the party that retained them. Those attorneys shall then return or destroy the confidential or highly confidential information in accordance with this Order. The provisions of this Order shall remain in full force and effect as to any person or party who has obtained access to documents, testimony or other information designated as confidential or highly confidential information hereunder, except as may be specifically ordered by the Court or consented to by the producing party.

**Reservation of Rights**

21. The terms of this Order shall in no way affect the right of a Disclosing Entity (a) to withhold information on grounds of immunity from discovery such as, for example, attorney/client privilege or work product; (b) to raise or assert any objections heretofore or hereafter raised or asserted, including but not limited to defenses or objections with respect to the use, relevance or admissibility at trial, or discoverability of any information of materials; or (c) to reveal or disclose documents or information designated by the Disclosing Entity as confidential or highly confidential information.

22. The inadvertent disclosure of any document or information shall not operate as a waiver of any discovery privilege or exception, including without limitation the attorney-client

privilege or the work product exemption, if the party or person producing the documents or information requests return of the documents or information within thirty (30) days after discovery of the inadvertent disclosure. A party that has received inadvertently disclosed documents or information subject to a privilege shall, immediately upon discovery of the same, return or (with respect to any such documents or information which have been altered or incorporated into other documents in a privileged manner) destroy all documents constituting the same or incorporating such information and shall make no use thereof.

23. The terms of this Order shall in no way affect the right of a Disclosing Entity from continuing to use information or documents designated as confidential or highly confidential as it would in the normal course of its business.

24. The parties' agreement to produce documents or furnish information is conditioned upon the confidential treatment of them as provided herein. Nothing in this Order shall be construed to create rights in any person not a party to this litigation except to the extent such person is a Disclosing Entity hereunder.

#### Subpoena By A Third Party

25. In the event that any person having possession, custody or control of any document or information produced in this action and designated as confidential or highly confidential receives a subpoena or other process or order to produce such document or information in another matter or proceeding, such person shall promptly notify the Disclosing Entity, shall furnish such Disclosing Entity with a copy of said subpoena or other process or order, and shall keep confidential such information and documents until the subpoena, process or order shall have become final and incontestable. The Disclosing Entity shall have the burden of defending against such subpoena or other process or order.

Conclusion of Action

26. Within 90 days after the conclusion of this action in its entirety, all parties and persons having received confidential or highly confidential information either shall return such material and all copies thereof to counsel for the party that produced it and shall certify that fact by affidavit, or shall destroy all confidential or highly confidential information in a manner that ensures that such material will not be disclosed to other persons and shall certify the method and manner in which such confidential or highly confidential information was destroyed by affidavit to the producing party. In the case of confidential or highly confidential information furnished by a party to a testifying or consulting expert, counsel for that party shall have the responsibility of insuring that all such discovery material, including abstracts and summaries thereof, is returned to counsel for the party which produced such materials, or destroyed. All materials returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this paragraph. "Conclusion of this action" means that period of time after all appeal periods have expired or after the execution of a settlement agreement among all the parties finally disposing of this action. Nothing contained in this Protective Order shall prevent counsel from retaining files of the correspondence, pleadings, memoranda, and transcripts from this proceeding at the conclusion of this matter, provided, however, that this Protective Order shall remain in full force and effect with respect to the handling or use of any confidential or highly confidential information contained in those files.

27. The Court retains jurisdiction during and after final disposition of this action to enforce this Order and to make such amendments, modifications, deletions, and additions to this Order as the Court may from time to time deem appropriate or as may be requested by the parties.

ORDERED, this 24 day of January, 2003:

  
John R. Padova.

UNITED STATES DISTRICT JUDGE

EXHIBIT A

Categories of information subject to designation under paragraph 2 of the Protective Order.

1. Non-public pricing or cost information.
2. Non-public premium or rate information.
3. Non-public financial data.
4. Non-public information regarding the financial, marketing or other aspects of any service, product, procedure at issue in this litigation.
5. Business plans.
6. Marketing information and sales information (including plans, studies, strategies, proposals, research, market penetration analyses and goals).
7. Non-public information relating to the guidelines, manuals, operating procedures and systems of any party to this litigation.
8. Non-public competitor information (including assessments and evaluations).
9. Information identifying customers or members, including but not limited to information regarding medical histories of individuals.
10. Information in the possession of a person or party under an express agreement of confidentiality between that person or party and the person from whom the information was obtained.
11. Information required by law to be maintained in confidence (including information maintained in employees' personnel files).



EXHIBIT B

AGREEMENT CONCERNING INFORMATION COVERED BY PROTECTIVE  
ORDER

I, \_\_\_\_\_, hereby acknowledge that:

- a) I have received a copy of the Protective Order ("Order") entered in this action by the United States District Court for the Eastern District of Pennsylvania,
- b) I have either read the Order and/or have had the terms of the Order explained to me by an attorney,
- c) I understand the terms of the Order and agree to comply with and to be bound by such terms,
- d) I may receive documents or information designated as confidential or highly confidential and understand that such documents and information are provided to me pursuant to the terms and restrictions of the Order,
- e) I agree to hold in confidence any documents and information disclosed to me pursuant to the terms of the Order and to only use such documents and information for the purpose of the legal proceeding in which they were produced
- f) I hereby submit myself to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania for resolution of any matters pertaining to the Order, and
- g) I understand that, in the event I fail to abide by the terms of the Order, I may be subject to sanctions, including sanctions by way of contempt imposed by the Court.

My address is:

My present employer is:

Signature: \_\_\_\_\_

Date:

EXHIBIT "B"



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHESTER COUNTY HOSPITAL,  
Plaintiff

VS.

INDEPENDENCE BLUE CROSS, et al.,  
Defendants

NO. 2:02-cv-02746-JRP

**FILED**

**JUL - 7 2003**

MICHAEL E. KUNZ, Clerk

By \_\_\_\_\_ Dep. Clerk

O R D E R

AND NOW, this 7th day of July, 2003, upon consideration of the Motion to Intervene and for Protective Order by Multiplan, Inc. (Doc. No. 54), the Motion for Protective Order by CIGNA (Doc. No. 55), the Motion to Intervene and for Protective Order by Aetna, Inc. (Doc. No. 56), the Motion to Intervene and for Protective Order by Coventry Healthcare of Delaware (Doc. No. 66), the Motion to Intervene and for Protective Order by Health Net of the Northeast, Inc. (Doc. No. 67), the Motion to Intervene, for Protective Order and to Quash by MultiPlan, Inc. (Doc. No. 83), the Motion to Modify Protective Order by Plaintiff Chester County Hospital (Doc. No. 57), and all Responses thereto, it is hereby ORDERED that:

1. The Protective Order entered between the parties in this matter and signed by the Court on January 24, 2003, is hereby MODIFIED as follows:

- A. Documents that include proprietary and trade secret information from third-party insurers (the "Insurers") shall be marked "highly confidential information" by the Disclosing Entity;
- B. Paragraph 10 of the Protective Order shall be modified as follows:
  - j. The only IBC employee or officer to whom highly

confidential information may be disclosed is Joseph Nolan. The only Chester County Hospital employee or officer to whom highly confidential information may be disclosed is Paul Vanore. Neither Mr. Nolan nor Mr. Vanore will be involved in "competitive decision making" for a period of two years from the date of this Order. For purposes of this paragraph, "competitive decision making" shall mean participating or advising in any or all of IBC's or Chester County Hospital's decisions made in light of information about a competitor. Both Mr. Nolan and Mr. Vanore shall submit an affidavit within five (5) days from the date of this Order stating that they shall use the highly confidential information in no way other than for purposes of the current litigation.

- C. With regards to the Insurers, their strategic business plans and hospital contracts shall be considered "highly confidential" under the Order;
- D. Material designated as highly confidential by the Insurers may not be disclosed to IBC, orally or otherwise, except under the conditions set forth under paragraph (b) above, irrespective of settlement negotiations;
- E. The protections of Paragraph 10(a) shall apply with equal force to the Insurers, including CIGNA, Aetna, MultiPlan, Coventry and Health Net;
- F. Paragraph 11 of the current protective order, addressing the filing of confidential and highly confidential information under seal, shall apply to any summary judgment motions;
- G. The Insurers shall have the same notice and opportunity to object to the disclosure of confidential and highly confidential information to (1) deponents, (2) pre-trial hearing and trial witnesses, and (3) non-testifying consultants and experts;
- H. Counsel for each party shall maintain a list of all persons to whom any third party confidential or highly confidential information is disclosed and the agreements signed by such persons, and shall provide counsel for a Disclosing Entity upon request with a copy of the list and signed agreements;
- I. In the event that a party objects to an Insurer's good faith designation of confidential or highly confidential information, the procedural burden of moving the Court for relief shall be placed on the

party-litigant;

- J. Any outside counsel to whom an Insurer's highly confidential information is to be disclosed shall be provided with a copy of the Order (as modified), and be advised, and agree, that they are bound by the Order;
- K. The Insurers shall receive forty-eight hours advance notice regarding any subpoenas issued by either party seeking the Insurers' highly confidential information.
- L. No more than six (6) copies shall be made of documents produced by the Insurers without the Insurers' express consent;
- M. At the conclusion of this litigation, the parties shall either destroy or return to the Insurers all documents produced by the Insurers, and confirm in writing that as to those documents the Order has been abided;
- N. Any notices that are to be provided to Aetna under the Order shall be sent via facsimile and 1st Class mail to: James C. Crumlish III, Elliott Reihner Siedzikowski & Egan P.C., 925 Harvest Drive, Suite 300, Blue Bell, PA 19422; Facsimile Number: (215) 977-1099.

2. Plaintiff's Motion to Compel Return of Confidential Documents Inadvertently Disclosed to Aetna is DENIED AS MOOT;

3. The aforementioned Motions to Intervene and for Protective Orders filed by the non-party Insurers are DENIED by reason of the relief already afforded by this Order.

It is so ORDERED.

ENTERED

JUL - 8 2003

CLERK OF COURT

BY THE COURT:



CHARLES B. SMITH  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

CHESTER COUNTY HOSPITAL,  
Plaintiff

VS.

INDEPENDENCE BLUE CROSS, et al., :  
Defendants :

NO. 2:02-cv-02746-JRP

FILED

**JUL - 7 2003**

**MICHAEL E. KUNZ, Clerk**

By \_\_\_\_\_ Dep. Clerk

ORDER

AND NOW, this 7th day of July, 2003, upon consideration of Health Net of the Northeast, Inc.'s Uncontested Application for Admission of Attorney Pro Hac Vice (Doc. No. 84), it is hereby ORDERED that Katie A. Gummer, Esq., is admitted to the practice of law before the United States District Court for the Eastern District of Pennsylvania, pro hac vice, for all purposes in connection with the above-referenced action.

It is so ORDERED.

BY THE COURT:

CHARLES D. SMITH

CHARLES B. SMITH  
UNITED STATES MAGISTRATE JUDGE

~~7/7/03 Copy via fax to:  
See attached list~~

ENTERED

JUL - 8 2003

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHESTER COUNTY HOSPITAL,  
Plaintiff

VS.

INDEPENDENCE BLUE CROSS, et al.,  
Defendants

NO. 2:02-cv-02746-JRP

**FILED**

**JUL 7 2003**

**MICHAEL E. KUNZ, Clerk**  
Dep. Clerk

O R D E R

By \_\_\_\_\_

AND NOW, this 7th day of July, 2003, upon consideration of the Motion to Compel of Plaintiff Chester County Hospital ("CCH") (Doc. No. 62) and the Response of Defendant Independence Blue Cross ("IBC"), it is hereby ORDERED as follows:

1. With respect to CCH's request for documents concerning IBC's financial performance in states and territories other than Pennsylvania, New Jersey and Delaware:

a. IBC shall produce documents reflecting its annual financial performance in Texas, Florida and Puerto Rico; and

b. CCH's request for documents reflecting IBC's reasons for entering or exiting those areas is denied as they bear a highly attenuated relationship to the case at bar;

2. With respect to the redacted documents, CCH's motion is denied without prejudice. Should CCH make a more specific showing in the future that it is entitled to the redacted portions of the documents at issue, the Court shall reconsider this ruling;

3. With respect to CCH's request for IBC's annual budgets since 1994, the Court shall withhold ruling on this portion of the motion pending notice from IBC regarding its good faith efforts to

obtain a limited set of documents reflecting its basis for its annual budgets;

4. With respect to CCH's request for documents relating to IBC's annual employee incentive programs, its motion is denied;

5. With respect to CCH's request for documents created in the course of merger discussions with Highmark, its motion is denied as moot.

It is so ORDERED.

BY THE COURT:



CHARLES E. SMITH  
UNITED STATES MAGISTRATE JUDGE

~~7/7/03 Copy via fax to:~~  
~~See attached list~~

ENTERED  
JUL - 8 2003  
CLERK OF COURT

EXHIBIT "C"



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHESTER COUNTY HOSPITAL,  
Plaintiff

VS.

INDEPENDENCE BLUE CROSS, et al.,  
Defendants

NO. 2:02-cv-02746-JRP

**FILED**

**JUL 16 2003**

MICHAEL E. KUNZ, Clerk

By                      Dep. Clerk

ORDER

AND NOW, this 16th day of July, 2003, the Court clarifies its July 7, 2003 Order in this matter as follows:

10(j). The only IBC employee or officer to whom highly confidential information of insurers other than IBC may be disclosed is Joseph Nolan. The only Chester County Hospital employee or officer to whom highly confidential information of insurers other than IBC may be disclosed is Paul Vanore. Neither Mr. Nolan nor Mr. Vanore will be involved in "competitive decision making" for a period of two years from the date of this Order. For purposes of this paragraph, "competitive decision making" shall mean participating or advising in any or all of IBC's or Chester County Hospital's decisions made in light of information about a competitor. Both Mr. Nolan and Mr. Vanore shall submit an affidavit within five (5) days from the date of this Order stating that they shall use the highly confidential information in no way other than for purposes of the current litigation. The restrictions in paragraph 10(b) otherwise remain unchanged.

It is so ORDERED.

**ENTERED**

BY THE COURT:

**JUL 16 2003**

**CLERK OF COURT**


  
CHARLES B. SMITH  
UNITED STATES MAGISTRATE JUDGE

EXHIBIT "D"

DUANE MORRIS

FIRM and AFFILIATE OFFICES

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July 16, 2003

**Via Hand Delivery**

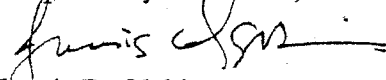
The Honorable Charles B. Smith  
United States District Court for the E.D. Pa.  
3006 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

**Re: The Chester County Hospital v. Independence Blue Cross, et al.  
Civil Action No. 02-CV-2746**

Dear Magistrate Judge Smith:

Our firm represents the interests of Chester County Hospital. We received a copy of Your Honor's Order as a result of the Motion to Modify the Protective Order. We wanted to advise Your Honor and counsel for the insurers other than IBC, that counsel for Chester County Hospital has determined that it will not provide access to any highly confidential documents designated by insurers other than IBC to Paul Vanore. Accordingly, we will not be providing an affidavit for Mr. Vanore.

Respectfully submitted,

  
Lewis R. Olshin

LRO/jl

cc: Christopher T. Koegel, Esquire  
James Kress, Esquire  
James Crumlish, III, Esquire  
James Becker, Esquire  
Robert Hayes, Esquire  
Katie Gummer, Esquire  
Brian Must, Esquire  
William J. Leonard, Esquire

DUANE MORRIS LLP

ONE LIBERTY PLACE PHILADELPHIA, PA 19103-7396  
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EXHIBIT "E"

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHESTER COUNTY HOSPITAL

v.

INDEPENDENCE BLUE CROSS,  
QCC INSURANCE COMPANY  
KEYSTONE HEALTHPLAN EAST, and  
KEYSTONE MERCY HEALTH PLAN

NO. 02-CV-2746

DECLARATION OF ROBERT J. FRANZOI


Pursuant to 28 U.S.C. § 1746, I, Robert J. Franzoi, declare the following:

1. My name is Robert J. Franzoi. I have been employed for the last 17 years with Aetna Inc. ("Aetna"), and presently act as Regional Manager for Health Care Delivery in Aetna's Mid-Atlantic Region. In that capacity, my responsibilities include overseeing the establishment and maintenance of contractual relationships with medical care providers.
2. Aetna administers health benefits to individuals throughout the country through, for example, health maintenance organizations ("HMOs"). Aetna's Mid-Atlantic Regional headquarters are located in King of Prussia, Pennsylvania, and it does a substantial amount of business in this area.
3. To administer health benefits to its members, Aetna maintains a network of medical care providers such as doctors, hospitals, and physician specialists, which provide medical services to eligible members. This network is created by contracts entered into by Aetna (and/or its subsidiaries and affiliates) with each medical care provider.
4. Aetna's contracts with medical care providers typically include a schedule of rates that Aetna agrees to pay a provider for particular medical services rendered. Such rate schedules are individually negotiated and are among the central financial terms of such contracts.
5. Aetna's rate schedules with medical care providers are among Aetna's most sensitive, confidential and proprietary information. I can attest to the fact that in Aetna's industry, information such as rate schedules are uniformly considered to be proprietary and confidential.
6. If Aetna provider rate schedules were disclosed to Aetna's competitors or potential competitors, such information could aid such companies in their efforts to compete against Aetna. If a competitor knew the financial terms negotiated by Aetna with

providers, it could use that information to negotiate more favorable rates, and undermine Aetna's negotiating strategies.

7. Moreover, if providers learned of the rates that Aetna had negotiated elsewhere, that information could be used by medical care providers against Aetna in its efforts to negotiate favorable financial terms.
8. Because such information is confidential and proprietary, Aetna always includes in its provider contracts provisions as to Confidentiality and Non-Disclosure, prohibiting direct or indirect disclosure to any third parties of, specifically, the rate schedules or other financial terms of such contracts.
9. Because such information is so sensitive, Aetna will typically not reveal this information to third parties, directly or indirectly, unless required to do so under law.
10. I have been informed that in the above-captioned matter, Independence Blue Cross has sought to have Chester County Hospital ("CCH") disclose contract terms, rate schedules and documents detailing negotiations between CCH and Aetna.
11. I can confirm that Aetna contracts with CCH. That contract and its financial terms, including specifically the rate schedules, are covered by express Confidentiality and Non-Disclosure provisions, as described above, prohibiting CCH from disclosing such information to third parties such as IBC, in recognition of the fact that such information is sensitive, proprietary, and confidential.
12. In recognition of the harm that would occur due to a breach of the confidentiality provisions in their contract, CCH and Aetna agreed that breach of such provisions would cause irreparable harm, for which money damages would not be adequate to remedy.
13. I have been informed that CCH's request for this information may also encompass rate schedules negotiated between Prudential Healthcare and CCH. I can attest to the fact that in 1999, Aetna acquired the operations of Prudential Healthcare. I can also attest to the fact that, like Aetna, Prudential included in its provider contracts provisions that prohibited disclosure of the financial terms of those arrangements, including rate schedules, in recognition of the sensitive and proprietary nature of these financial terms.
14. Finally, I can attest to the fact that IBC, like Aetna, operates an HMO in the Commonwealth of Pennsylvania.

I declare under the penalty of perjury that the foregoing is true and correct.



ROBERT J. FRANZOI

EXHIBIT "F"



DUANE MORRIS

FIRM and AFFILIATE OFFICES

LEWIS R. OLSHIN  
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May 22, 2003

Via Federal Express

James C. Crumlish, Esquire  
Elliott Reihner Siedzikowski Egan, P.C.  
Union Meeting Corporate Center V  
P.O. Box 3010  
925 Harvest Drive  
Blue Bell, PA 19422

Re: The Chester County Hospital v. Independence Blue Cross, et al.  
Civil Action No. 02-CV-2746

Dear Mr. Crumlish:

As we previously advised you, the Chester County Hospital has been served with a Request for Production of Documents which requires us to produce to Independence Blue Cross (IBC) the documents attached to this letter. We have previously advised you that the Court has entered a Protective Order in this case and the documents which we intend to produce have all been marked "highly confidential" in accordance with that Protective Order.

We understand that you object to the production of these documents pursuant to the Protective Order. IBC has raised this issue with the Court and we have been advised to inform you that in the event that you fail to file a motion with the United States District Court for the Eastern District of Pennsylvania by May 30, 2003, we will be required to produce the attached documents to IBC. In addition, we are redacting the small number of documents which contain not only your confidential information but also that of other insurers. We will federal express those documents to you tomorrow.

NEW YORK  
LONDON  
CHICAGO  
HOUSTON  
PHILADELPHIA  
SAN FRANCISCO  
BOSTON  
WASHINGTON, DC  
ATLANTA  
MIAMI  
NEWARK  
ALLENTOWN  
WILMINGTON  
CHERRY HILL  
HARRISBURG  
BANGOR  
PRINCETON  
PALM BEACH  
WESTCHESTER

James C. Crumlish, Esquire


May 22, 2003

Page 2

Accordingly, if you do not seek protection from the Court, the Chester County Hospital will have no choice concerning the release of this information. We would appreciate it if you would inform us of your decision prior to May 30, 2003.

Counsel for IBC is being sent a copy of this correspondence, but is not being provided with the enclosures.

Very truly yours,



Lewis R. Olshin

LRO:jl:PH2V732382.2

Enclosures

cc: Paul Diamond, Esquire

EXHIBIT "G"

LAW OFFICES

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EMAIL PAUL.DIAMOND@OSBERMAYER.COM

June 19, 2003

VIA FACSIMILE

The Honorable Charles B. Smith  
UNITED STATES DISTRICT COURT  
U.S. Courthouse, Room 3006  
601 Market Street  
Philadelphia, PA 19106

Re: **Chester County Hospital v. Independence Blue Cross et al.**  
**Case No. 02-CV-2746**

Dear Judge Smith:

I represent defendants in the above-captioned matter. As Your Honor knows, five third-party insurers have sought to modify the Protective Order in this matter, based on their objections to IBC's in-house counsel seeing rate and other proprietary information. I have communicated with counsel to four of the insurers (Aetna, CIGNA, Multi-Plan, and Health Net) and proposed to them a compromise by which their proprietary information would not be disclosed to any IBC in-house counsel. (I have been unable to reach Coventry's counsel). All counsel agreed to review my proposal with their clients. None has yet told me that his client has accepted or rejected the proposal. I believe a conference with the Court would be extremely helpful in resolving this open issue. Defendants' answer to the Aetna, CIGNA, and Multi-Plan Motions is currently due on Monday, June 23<sup>rd</sup>. Our answer to the Health Net and Coventry Motions is currently due on June 27<sup>th</sup>. With the Court's permission, defendants propose to file our answer to all the outstanding Motions promptly after the conference if the conference is not successful.

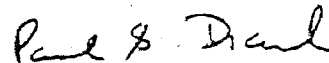
The Honorable Charles B. Smith

Page 2

June 19, 2003

Accordingly, on behalf of defendants I respectfully request a conference with the Court to resolve without the need for further litigation the outstanding Motions to Modify. Lewis Olshin, counsel for plaintiff, Chester County Hospital, joins in this request for a conference. For the Court's convenience, I have attached a form of Order.

Respectfully,



PAUL S. DIAMOND

PSD/jrm

cc: Honorable John R. Padova (facsimile.)  
Lewis R. Olshin, Esquire (facsimile)  
James C. Crumlish, III, Esquire (facsimile)  
Brian T. Must, Esquire (facsimile)  
Richard A. Feinstein, Esquire (facsimile)  
Kevin C. McClay, Esquire (facsimile)  
Katie A. Gummer, Esquire (facsimile)  
Robert W. Hayes, Esquire (facsimile)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHESTER COUNTY HOSPITAL

v.

INDEPENDENCE BLUE CROSS,  
QCC INSURANCE COMPANY,  
KEYSTONE HEALTH PLAN EAST, and  
KEYSTONE MERCY HEALTH PLAN

CIVIL ACTION NO. 02-CV-2746

ORDER

AND NOW, this \_\_\_\_\_ day of June, 2003, it is hereby ORDERED that the Court will conduct a conference at \_\_\_\_\_, on \_\_\_\_\_, to resolve the outstanding Motions to Modify the Protective Order. If the Motions are not resolved at this conference, defendants shall file their answer to the Motions within seven (7) days thereafter.

BY THE COURT:

\_\_\_\_\_  
SMITH, J.



EXHIBIT "H"

Extra

— LAW OFFICES —

**ELLIOTT REIHNER SIEDZIKOWSKI & EGAN, P.C.**

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READING, PENNSYLVANIA 19601  
610-374-6756

June 19, 2003

**VIA FAX (215) 597-6125 and FIRST CLASS MAIL**

Honorable Charles B. Smith  
United States District Court for the  
Eastern District of Pennsylvania  
U.S. Courthouse, Room 3006  
601 Market Street  
Philadelphia, PA 19106

**Re: The Chester County Hospital v. Independence Blue Cross, et al.  
U.S. District Court for the Eastern District of Pennsylvania  
Civil Action No. 02-CV-2746 (JRP)**

Dear Judge Smith:

I am in receipt of Paul Diamond's letter dated June 19, 2003. On behalf of Aetna, we concur that a conference with Your Honor, pursuant to Judge Padova's Orders relating to these discovery disputes, would be useful. However, contrary to Mr. Diamond's position, we believe that the Court and the non-parties would be better served if plaintiff, Chester County Hospital, and defendant, Independence Blue Cross, fully brief their respective positions, so we may find more directly the areas of agreement and focus appropriate efforts on areas of disagreement and their possible reconciliation. I believe that this is consistent with Judge Padova's Order directing party disputes, which were previously presented to the Court without a fully developed record, and which thereafter we were advised by the parties required Aetna to file the motion for protective order which is presently pending before this Court. It is my understanding, although we have not been served with additional discovery, that the parties continue to seek, *inter alia*, Aetna's confidential and proprietary trade secret information from other non-parties through discovery, notwithstanding Aetna's longstanding objection and notice to the parties of its legally protectable interest in safekeeping this information. Hopefully, all of the parties and non-parties will set forth their positions in an articulate fashion as to avoid any unnecessary waste of either the Court's or anyone else's time. We appreciate the Court's consideration of this matter.

Respectfully,

  
JAMES C. CRUMLISH, III

JCC:jmc

jcc: 55215v1

cc: Honorable John R. Padova  
Paul S. Diamond, Esquire  
Lewis R. Olshin, Esquire  
Brian T. Must, Esquire  
Richard A. Feinstein, Esquire  
Kevin C. McClay, Esquire  
Katie A. Gummer, Esquire  
Robert W. Hayes, Esquire  
(All Telecopy)

EXHIBIT "I"

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHESTER COUNTY HOSPITAL,  
Plaintiff

vs.

02-CV-2746

INDEPENDENCE BLUE CROSS,  
QCC INSURANCE COMPANY  
KEYSTONE HEALTHPLAN EAST, and  
KEYSTONE MERCY HEALTH PLAN,  
Defendants

10:00 a.m.  
July 7, 2003  
Courtroom 3-D  
Philadelphia, PA

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Before MAGISTRATE JUDGE CHARLES B. SMITH

---

APPEARANCES:

Lewis R. Olshin, Esq.  
H. Bruce Hanson, Esq.  
Seth Goldberg, Esq.  
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Philadelphia, PA 19103-7396

For the Plaintiff

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Daniel Kotchen, Esq.  
BOIES SCHILLER & FLEXNER LLP  
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Washington, D.C. 20015

Nancy O'Neill, OCR  
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601 Market Street  
Philadelphia, PA 19106

APPEARANCES: (cont'd)

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Mark J. Dianno, Esq.  
IBC - Sr. Counsel

John P. Elliott, Esq.  
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& EGAN, PC  
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For Aetna, Inc.

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JONES DAY  
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Washington, D.C. 20001

For CIGNA

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Mellon Bank Center  
1735 Market St., Ste. 700  
Philadelphia, PA 19103

For Health Net

Sarah E. Davies, Esq.  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103

For Coventry Health Care  
of Delaware

Brian T. Must, Esq.  
METZ SCHERMER & LEWIS  
11 Stanwix St., 18th Flr.

For Multiplan, Inc.



1 PROCEEDINGS

2 THE COURT: Good morning. Always a pleasure  
3 to make billable hours for so many.

4 I think I have a sense of it all, but  
5 when I'm setting the plate for another judge, I like to  
6 have everything right the first time.

7 I will go through these motions separately,  
8 and I'm not sure whether I will necessarily rule right  
9 now or maybe reserve that. And we will put together a  
10 short memorandum opinion in a day or so, but I'm not  
11 going to make it any great length. But let me get to  
12 what I see is the first issue. Now, the willingness to  
13 modify what is out, I'm given to understand, may have  
14 been acceptable to some folks, and if that's the case, I  
15 would like to have a sense of what more we need to do,  
16 or who excepts now.

17 MR. OLSHIN: Your Honor, maybe I can just give  
18 you a brief --

19 THE COURT: Jen, would you have everybody sign  
20 in.

21 MR. OLSHIN: We have something circulating.

22 Lewis Olshin representing Chester County  
23 Hospital. And I guess we are fortunate to be here today  
24 because half of us got locked out of one Liberty Place  
25 the Fourth of July weekend.

1           What basically took place is, as your Honor is  
2 aware, we negotiated with counsel for IBC, Mr. Diamond,  
3 and his colleagues an original protective order that was  
4 signed by Judge Padova some time ago; and in the course  
5 of discovery, as often happens, we wound up serving  
6 subpoenas on various third parties. Many of those third  
7 parties are here in the courtroom today and represented.

8           Essentially, what we tried to do is meet and  
9 confer with the third parties who had some concerns  
10 about basically two classes of confidential information.  
11 One class would be basically business plans and other  
12 proprietary business information. A second class, which  
13 I guess is more sensitive to the insurers, dealt with  
14 the actual rate information that they negotiated with  
15 various hospitals in the Philadelphia area over  
16 reimbursement rates.

17           In meeting and conferring with them, and then  
18 having subsequent conversations with Mr. Diamond, we  
19 tried to, I guess, compartmentalize our discussions.  
20 The first issue was trying to deal with what we viewed  
21 as the bigger problem of who had access to the  
22 confidential information. Then some of the third  
23 parties also had some other suggested modifications to  
24 the protective order which we were willing to consider.

25           In talking to Mr. Diamond about the situation,

1 he and his clients -- and I will let him speak for IBC  
2 -- came forward with an attempted solution, which I  
3 think he tried to zero in on the issues in Pansy and  
4 the issues in Ball Memorial Hospital related to  
5 whether people at IBC can be judged as competitive  
6 decision-makers and whether you could carve out from  
7 those competitive decision-makers someone else at IBC  
8 who was not a competitive decision-maker as held by the  
9 case law, and that person would then be the only one at  
10 IBC who would have access to this confidential  
11 information.

12 But I can let Mr. Diamond speak to that. It  
13 is his proposal. It is one which, at least from our  
14 perspective, goes a long way to try to meet the  
15 requirements of the case law and also meet some of the  
16 concerns as expressed by the insurers. Although I will  
17 add parenthetically, your Honor, that I believe some of  
18 the insurers who are represented here today don't  
19 believe Mr. Diamond's suggestions go far enough. But  
20 from the hospital's perspective, we certainly think IBC  
21 has made a good faith effort to come up with a  
22 compromise that sort of meets the parameters of the case  
23 law. But I will turn this over to Mr. Diamond.

24 MR. DIAMOND: Your Honor, may I approach?

25 THE COURT: Sure.

1 MR. DIAMOND: This is my proposal in my letter  
2 to the court. I made it orally to all the insurance  
3 counsel who would call my back.

4 And the crux of the problem is that under the  
5 protective order as currently approved by Judge Padova,  
6 three in-house lawyers at IBC are allowed to see highly  
7 confidential documents: Mr. Dianno, who is here; Paul  
8 Tufano, the general counsel; and Ms. Thompson, the head  
9 of litigation. We could not represent to the other side  
10 or to the insurers that they would not be involved in  
11 any way in competitive decision-making. And so, what we  
12 have done is we have selected a member of senior  
13 management who is not in his daily activities and will  
14 not be involved in competitive decision-making.

15 This case has been going on for approximately  
16 14 months. The way we negotiated the protective order,  
17 the way we structured our defense is really from a due  
18 process concern. We feel very strongly that somebody in  
19 senior management at IBC has to be able to see this.  
20 This is a case about rates. They say we created a  
21 monopsony and artificially depressed rates. The rates  
22 of our competitors are going to be critical in the  
23 litigation. And even though this person, Jim Nolan, the  
24 controller of IBC, even though he is not involved in  
25 competitive decision-making, and even though he will not

1 be allowed to discuss the highly confidential documents  
2 with senior management at IBC, he will be able to make  
3 recommendations to them regarding the future of this  
4 litigation. We are but representatives of the client.  
5 He is the client. And we feel we have gone very, very  
6 far in eliminating a third of our defense team from  
7 seeing these highly critical documents by designating  
8 Mr. Nolan.

9 And we didn't indicate for what period because  
10 the only insurer to get back to me was Mr. MacLay  
11 representing CIGNA when I proposed this. So we really  
12 don't have a sense of how long he should be excluded  
13 from the competitive decision-making. But we feel this  
14 really should take the issue of somebody at IBC using  
15 this to the advantage of IBC and to the detriment of our  
16 competitors off the table. He will not have the  
17 opportunity through advertance or inadvertance in the  
18 language of the case law.

19 And the remaining issues for the insurance  
20 companies really are questions of procedure. I believe  
21 Aetna's motion is sort of in a class by itself. I think  
22 that Aetna's order really wants to make it impossible  
23 for us to use any of these documents at all. So why  
24 don't I deal with the other issues first.

25 First of all, they want to shift the burden.

1 As presently written, we believe that Pansy -- and  
2 we model our order on the last page of the  
3 confidentiality order which Judge Padova had. You  
4 probably are passingly familiar with that, Judge. And  
5 we feel that the law requires the party advocating the  
6 confidentiality order has the burden of going to the  
7 court if the other side disputes that and how the order  
8 is written. The insurers want to change that. We don't  
9 think that's consistent with the case law, and so we  
10 won't agree to that. In addition, they want to have 10  
11 days notice any time -- they want paragraph 10g of the  
12 protective order to apply to the third-party insurers.

13 We have approximately three dozen depositions  
14 that are going to be taking place within the extended  
15 discovery for 90 days. I expect that this material is  
16 going to be used in most if not all of these  
17 depositions. And I think if we have to give them 10  
18 days notice every time we intend to use this  
19 information, you are going to see a lot more of us and  
20 it's going to be very difficult to proceed with  
21 discovery.

22 Let me add in closing. We are an insurance  
23 company. I absolutely agree that the information they  
24 are seeking to protect, it is proprietary, it is trade  
25 secret. We don't want to be here. We don't want to



1 have to look at this stuff, but we have been sued. They  
2 are seeking 20 million dollars treble and they are  
3 seeking to break up the company, and we have to be able  
4 to defend ourselves. And with this compromise, it  
5 allows us to defend ourselves and will adequately  
6 protect their proprietary information.

7 THE COURT: Are there persons other than  
8 Paul/Ellie/Mark that they want excluded?

9 MR. DIAMOND: Everybody will be excluded now.  
10 Under the protective order, the only three people at IBC  
11 who can see any highly confidential documents are Paul,  
12 Ellie and Mark.

13 THE COURT: Okay.

14 MR. DIAMOND: And they will be able to  
15 continue to see highly confidential documents under our  
16 proposed order, except for the third-party insurers.  
17 They will not be able to see the third-party highly  
18 confidential documents. And under this proposed order,  
19 these guys can mark whatever they want highly  
20 confidential and nobody at IBC can see them. And we  
21 could not legitimately oppose that, particularly given  
22 our statement on the record. We could not oppose their  
23 designation in that we have exactly the same thing, that  
24 our rates are proprietary. They're absolutely right.  
25 This is our formula for Coca Cola. The rates, strategic

1 plans, they are proprietary, and they will be marked  
2 highly confidential. Only Mr. Nolan will be allowed to  
3 see them.

4 THE COURT: Um-hmm. All right.

5 May I hear from another insurer in terms of  
6 how much further you would have us go?

7 MR. ELLIOTT: John Elliot for Aetna.

8 THE COURT: Yes, sir.

9 MR. ELLIOTT: It's our position --

10 THE COURT: Why don't you come up here. Then  
11 I don't need to put on any other glasses to see you.

12 MR. ELLIOTT: In terms of the plaintiff's  
13 proposed modifications, I speak for all of the insurers  
14 that we agree to the terms set forth in paragraph 2, all  
15 the terms in paragraph 2 with the exception that we  
16 would like to modify to encompass all the modifiers.  
17 Some of them are towards Aetna.

18 THE COURT: Okay.

19 MR. ELLIOTT: And paragraph i states that no  
20 more than three copies shall be made of documents  
21 produced by Aetna, and we would like it to be all  
22 documents containing confidential or proprietary  
23 information.

24 THE COURT: Let's stop right there. Anybody  
25 have a problem with that?

1 MR. DIAMOND: I'm sorry?

2 MR. ELLIOTT: Instead of being three documents  
3 produced by Aetna, we would like it to be all documents  
4 containing confidential or proprietary information.

5 MR. DIAMOND: That's fine.

6 What is our present agreement? Do we have  
7 six?

8 MR. OLSHIN: Six.

9 MR. DIAMOND: Judge, if I may?

10 THE COURT: Sure.

11 MR. DIAMOND: Most of these are redundant of  
12 what is in the protective order. And I don't see why it  
13 should be a certain number for -- on defendant's  
14 documents.

15 THE COURT: I agree. You have six in there  
16 already. Keep it six.

17 MR. ELLIOTT: Okay. And then I would have to  
18 agree with Mr. Diamond's characterization of our  
19 position. We don't believe that anybody at IBC should  
20 have access to our rates. He has highlighted the  
21 confidential and proprietary nature of this information  
22 and hasn't really articulated his reasons other than  
23 general defense, how his defense would be prejudiced  
24 with the controller not getting access to the  
25 information. The rates are the rates. They have an

1 expert who is going to be defending them. There is no  
2 reason for IBC or their employees to have access to our  
3 confidential and proprietary information.

4 THE COURT: You're saying the expert's access  
5 is good enough.

6 MR. ELLIOTT: And outside counsel is more than  
7 good enough to prepare the experts. They have no  
8 internal knowledge of our rates. If they need  
9 information from the controller about Blue Cross's rates  
10 and how these rates were reached without discussing our  
11 rates, I don't see how that would prejudice them. They  
12 don't have any specific knowledge about our rates that  
13 would conceivably help prepare the expert.

14 And I would also say that the law, including  
15 Dentsply and Miles vs. Boeing and  
16 Ball Memorial, supports our position that they  
17 shouldn't have access.

18 THE COURT: All right.

19 Any response from counsel there?

20 MR. DIAMOND: Our expert certainly can advise  
21 us on how to defend ourselves. Our expert cannot advise  
22 the board of IBC, cannot advise the president of IBC.  
23 Mr. Nolan can. We have chosen him very deliberately as  
24 senior management and the hospital board who can advise  
25 them as to the progress of the litigation so that the

1 client can make a reasonably informed decision.  
2 Obviously, he can't say to them Aetna's rates are lower  
3 than yours, don't settle. He can't say that. But he  
4 can advise them as to whether or not he thinks the  
5 litigation is of the nature the the case should settle,  
6 should seek summary judgment, if and when we proceed to  
7 trial whether they have a chance of winning the trial or  
8 not, all the decisions that a client has to make in a  
9 case of this magnitude.

10 And this is a case in which the plaintiff is  
11 really seeking to really transform the way health care  
12 is provided in the Delaware Valley, and I suggest that  
13 extends to the United States.

14 And Mr. Elliott I think is sort of turning a  
15 blind eye to the notion that we are but representatives  
16 of the client. Just as Mr. Olshin has Mr. Vanore, a  
17 numbers cruncher guy, who is going to see our highly  
18 confidential documents. But as Mr. Olshin said, this is  
19 really a due process when we negotiated this protective  
20 order. We need somebody who can see this material who  
21 actually is the client. That is exactly how we feel.  
22 And unlike many of the cases that have been cited to  
23 your Honor, we believe this is absolutely critical  
24 evidence to the case. This is a rate case.

25 MR. ELLIOTT: And so is the Ball Memorial

1 case as well.

2 MR. DIAMOND: But not a monopsony case.

3 MR. ELLIOTT: But it's only in the  
4 introduction, not in any of the counts.

5 But I don't understand why Mr. Diamond -- or I  
6 mean Mr. Nolan, I don't know what legal expertise he  
7 would have that would allow him to provide counsel to  
8 the firm that a member of his firm could not provide.

9 THE COURT: I agree with both of you in a way.  
10 I will take a look at that a little later then.

11 MR. ELLIOTT: One other thing. We would also  
12 like both parties -- I know plaintiff has, I don't know  
13 about defendant -- but subpoenaing hospitals and other  
14 parties, non-parties for documents that contain among  
15 other things our confidential proprietary information,  
16 we have been asking for disclosure about what documents  
17 have been produced so far in litigation that contain  
18 such information and an affidavit or disclosure of who  
19 those documents have been disseminated to so far. So  
20 that would be part of the request that we would be  
21 seeking as well.

22 THE COURT: Okay. Are you getting advance  
23 notice now of any such subpoenas that would be going out  
24 to others?

25 MR. ELLIOTT: No. We have had some notice

1 after the fact, but we have not been getting  
2 simultaneously -- I have been dealing with Mr. Crumlish  
3 who is of Mr. Elliott's firm, who I'm told he is in  
4 Ireland.

5 By the way, thank you for making yourself  
6 available to us so quickly. I meant to say that at the  
7 beginning.

8 I have let Mr. Crumlish know that we intend to  
9 subpoena various documents and he likely will be  
10 subpoenaing some of the Aetna documents. I don't think  
11 that would be a problem letting them know ahead of time  
12 as soon as we know what we will be issuing. But this  
13 was something Mr. Crumlish asked me fairly recently.

14 THE COURT: All right. How about telling him  
15 what you have got so far.

16 MR. DIAMOND: We haven't gotten anything.  
17 Everybody has been waiting for this hearing. Right now  
18 there is CCH, Chester County Hospital has subpoenaed --  
19 We haven't served subpoenas. These are CCH's subpoenas  
20 that have triggered these proceedings. We have been  
21 waiting for this proceeding before we serve our  
22 subpoenas that would require the production of this kind  
23 of trade secret stuff.

24 THE COURT: All right. Well, certainly if  
25 there is anything out there, we want you to share. What



1 would be reasonable advance notice of any subpoenas that  
2 are going out?

3 MR. ELLIOTT: Two days --

4 MR. DIAMOND: I think the rule says 48 hours.

5 THE COURT: Okay. Keep it that way then.

6 MR. MACLAY: Your Honor, may I be heard from  
7 CIGNA?

8 THE COURT: Sure.

9 MR. MACLAY: Your Honor, Kevin MacLay. I have  
10 the pending pro hoc motion that has been filed with the  
11 clerk's office with an appropriate check, but I would  
12 ask permission to speak.

13 THE COURT: Okay. What is this one all about?

14 MR. MACLAY: I represent CIGNA and I want to  
15 respond to counsel for IBC.

16 It is my understanding on the listing that  
17 with respect to paragraph 2 of the plaintiff's proposed  
18 order that all of the third-party insurers agree with  
19 it, and that even IBC has only contested a subsection of  
20 it. So I would hope with the respect to the rest,  
21 although I don't have prepared remarks, with respect to  
22 the notice and the opportunity to object having to do  
23 with the deponents, Your Honor, the problem with the  
24 protective order as currently written is they have to  
25 provide 10 days notice already to the deponents but not

1 to the owners of the information. So they can take  
2 CIGNA'S information, provide it to a deponent who does  
3 not work for CIGNA, and not only do we not get any  
4 notice, we have no opportunity under the current  
5 protective order to object to that whatsoever. And so  
6 subsection 2e, given the objections -- notice to object  
7 is critical because the only way that we can make sure  
8 that our information is not given to non-critical  
9 parties who -- It is not just a matter of 10 days being  
10 a hassle for the parties, your Honor; it's a matter of  
11 there is no other way to protect the third-parties'  
12 confidential information. We need to know who is  
13 getting our information. And absent that, we wouldn't  
14 have such a way.

15 THE COURT: If we are giving notice to  
16 deponents, can't we give it to anybody else?

17 MR. DIAMOND: Your Honor, the problem is that  
18 it gives them the opportunity to object, and they also  
19 seek to reverse the burden. And I suggest to your Honor  
20 that we will be before your Honor every time. It's just  
21 a question of concluding discovery in this 90 days, and  
22 I think it's just going to be unworkable.

23 I'm extremely sympathetic to his concerns.  
24 And I would point out under the protective order under  
25 paragraph 15, the witnesses can't keep documents, and

1 the depositions themselves would be designated highly  
2 confidential and treated accordingly. And I just think  
3 it will be unworkable if we have to give five or six  
4 companies notice. If these documents weren't so  
5 important in the case, maybe we would say something  
6 else, but they're just too central to our defense. I  
7 think we will be living before your Honor if we have to  
8 give them notice.

9 MR. MACLAY: This isn't just a notice issue or  
10 any of the third parties confidential information can be  
11 provided to deponents free of restriction of the  
12 protective order in the sense we cannot stop -- A  
13 deponent could be somebody who currently already works  
14 at IBC. And under the current protective order, it's  
15 possible that this would happen without us being given  
16 an opportunity to know about it, much less to object.

17 And so it's not just that these third parties  
18 are seeking notice before our information that we are  
19 providing as third parties, who are supposedly entitled  
20 to a higher degree of protection than parties. We are  
21 not just seeking notice. We're also seeking the ability  
22 to prevent disclosure when it's inappropriate, when a  
23 particular deponent --

24 THE COURT: As I see it, we have only got IBC.

25 MR. MACLAY: I'm talking about deponents.

1 THE COURT: You are saying they might subpoena  
2 one of their own?

3 MR. MACLAY: I'm saying that pool of potential  
4 deponents. And under the current protective order  
5 anybody can see our notice and have an opportunity to  
6 object. And the deponent's counsel and the deponent get  
7 notice. We think that should be extended to the owner  
8 of the information.

9 THE COURT: All right.

10 MR. MACLAY: With respect to the second issue,  
11 your Honor, this is the burden that Mr. Diamond was  
12 talking about. Just to clarify, as I think it's pretty  
13 clear on the face of the order, paragraph 2g isn't  
14 talking about substantive burden; it's talking about  
15 procedural burden. In other words, if IBC does not  
16 agree that certain documents produced by CIGNA, for  
17 example, are highly confidential, do they need to ask  
18 the court to lift the designation, or does CIGNA need to  
19 move the court to protect the designation? And I'm  
20 unaware of any governing case in Pansy, or anywhere  
21 else to the contrary.

22 Obviously, we don't have the benefit of any  
23 briefing from IBC defendants in this matter, so we don't  
24 know what they would have said if they had chosen to  
25 file a brief. As it stands now, I don't have any reason

1 to except their position, although I would like to have  
2 such an opportunity.

3 MR. DIAMOND: Had I filed a brief, I suspect I  
4 would have said something that I'm saying to the court  
5 now.

6 If I may just go through paragraph 2 so we are  
7 absolutely clear.

8 THE COURT: What page are you on?

9 MR. DIAMOND: It was attached to the  
10 hospital's motion. It was attached to CIGNA'S motion.

11 THE COURT: I have a memo here. This covers  
12 it all. Okay.

13 MR. DIAMOND: I think a, b, and c are not  
14 necessary under our compromise.

15 I think that d is premature. Applying this  
16 order extending the protections of the protective order  
17 to summary judgment is something that we just haven't  
18 worked out with the other side yet. We were very  
19 careful in our dealings to exclude summary judgment and  
20 trial because of all the public access concerns that  
21 Pansy discusses. That is what Mr. Maclay just  
22 discussed. And in the course of this litigation, if Mr.  
23 Olshin is taking the deposition of an IBC executive and  
24 wants to use CIGNA documents, if he has to give notice  
25 to CIGNA 10 days in advance, and then CIGNA can say this

1     guy may be involved in competitive decision-making, we  
2     don't want him to see that document.

3             So that Mr. Olshin under this scenario has the  
4     burden of going before your Honor and saying we want to  
5     use this document in this deposition. This is going to  
6     happen again and again. The witness can't keep the  
7     material. He is obligated to sign the affidavit of  
8     confidentiality.

9             I recognize that they're uncomfortable. I  
10    understand that. I just don't think there is any other  
11    workable way. I wish there were. I sympathize  
12    very much with my fellow insurance company lawyers. I  
13    think this is the only way to make this case work.

14            F we don't have a problem with.

15            I believe g is inconsistent with Pansy.

16            I don't have a problem with being bound by the  
17    order under h.

18            I believe we have already discussed i.

19            I would request that j be changed so that we  
20    have the obligation either to destroy or return, because  
21    I don't want to return stuff that may be work product.  
22    We may have Aetna or CIGNA or other documents quoted in  
23    some of our memoranda. I would like the opportunity to  
24    simply destroy it.

25            And k, we don't want to return everybody's

1 stuff to Mr. Crumlish. Obviously, that's -- well,  
2 Aetna might like it.

3 And paragraph 3, which says the January order  
4 stays the same is okay with us.

5 Our position is that paragraph 1 is redundant,  
6 unnecessary given our proposal of Mr. Nolan.

7 THE COURT: Okay.

8 MR. MACLAY: Your Honor, if I could be heard  
9 again?

10 THE COURT: Sure.

11 MR. MACLAY: I would like to clarify one item,  
12 your Honor, addressing some of Mr. Diamond's new attacks  
13 on the other provisions of the order that I didn't  
14 realize were an issue here.

15 If you read paragraph 2e, it doesn't have  
16 anything to do with the shifting of the burdens to the  
17 parties. In fact, what it says, 2e: The insurers shall  
18 have the same notice and opportunity to object to the  
19 disclosure of confidential and highly confidential  
20 information with respect to deponents and pretrial and  
21 trial witnesses that they currently have with respect to  
22 non-testifying experts.

23 We are not seeking to shift that burden. If  
24 that's Mr. Diamond's problem with 2e, I suppose it's not  
25 a problem.

1           What the burden has to do with, your Honor, is  
2   2g, which is whether we need designation of documents  
3   that are highly confidential and they don't agree, they  
4   need to move the court to change it. It has nothing to  
5   do with 2e where we have not attempted to shift the  
6   burden. We will retain that burden. We need the  
7   ability to protect that information, and there is no  
8   other way to proposed by the parties. So clearly there  
9   has to be some way to protect our information.

10           With respect to a, b and c, Mr. Diamond said  
11   that it's not necessary. Given we have never seen any  
12   briefing as to why they are not necessary, we believe  
13   they are necessary. The plaintiff has agreed that  
14   they're necessary. We have spent a lot of time working  
15   these things through.

16           With respect to 2a, your Honor, one of the  
17   reasons it's necessary is that under the current exhibit  
18   A of the current protective order, these types of  
19   information, and particularly strategic business plans,  
20   are considered to be -- Hold on a second, your Honor  
21   -- subject to designation under paragraph 2 of the  
22   protective order.

23           Paragraph 2 of the protective order is the  
24   paragraph that's deals with confidential information,  
25   not highly confidential information. And so under the



1 current protective order, your Honor, there is an  
2 argument that strategic business plans are merely  
3 confidential and not highly confidential and, therefore,  
4 can be disclosed to IBC's in-house counsel.

5 Well, the insurer strongly would disagree with  
6 that and we -- if their only objection is it's not  
7 necessary, that doesn't seem like a valid objection to  
8 the insurers to strike out that part of our proposed  
9 order.

10 With respect to 2b, there is a provision, your  
11 Honor, which is somewhat vague in current paragraph 3 of  
12 the protective order, which says that notwithstanding  
13 anything else in this protective order, counsel may  
14 orally inform their clients of their conclusions and the  
15 conclusions reached by experts provided this counsel  
16 shall not disclose any highly confidential documents.

17 Now, your Honor, the reason that's important  
18 is it's the one place in the protective order you will  
19 see the phrase confidential documents as opposed to  
20 confidential or highly confidential information. And so  
21 the concern that 2b was meant to address is that one of  
22 the parties informs their expert of details, and those  
23 experts for the purposes of settlement convey them on to  
24 the clients because they are not confidential documents.  
25 And this is meant to close that exception, and it's very

1 important and critical to the third-party insurers.

2 And then 2c, your Honor, I don't understand  
3 how they could argue it's not necessary. If you read  
4 paragraph 2a, which is the paragraph of the protective  
5 order that is addressed by 2c, that only protects IBC's  
6 information. It uses the word IBC in the paragraph. Of  
7 course, the third-party insurers who supposedly are  
8 highly protected should at least, your Honor, be  
9 accorded the same level of protection that IBC has given  
10 to itself, and that is all 2c does. So that is why it's  
11 necessary. It's critical.

12 There is no problem with h or f. I think that  
13 resolves the contested issues.

14 Thank you, your Honor.

15 MR. DIAMOND: Your Honor, all I meant on a, b,  
16 c, under our compromise a, b, and c are not necessary.  
17 That is all I meant. I'm sorry.

18 MR. ELLIOTT: Your Honor, if I may clarify one  
19 thing. Whether or not you adopted IBC's proposed order,  
20 I just note on its face, it does not specifically  
21 preclude IBC's in-house counsel from access to the  
22 documents. It says employee. I don't know what their  
23 role is.

24 MR. OLSHIN: It says only IBC officers are --

25 MR. DIAMOND: I don't know how much clearer I

1 can make it.

2

3 Paragraph 10 of the protective order, it says  
4 the only IBC officer to whom highly confidential  
5 information is to be given is Jim Nolan.

6 MR. ELLIOTT: But it doesn't specifically say  
7 that the evidence is to be precluded.

8 MR. DIAMOND: I'm happy to accommodate Mr.  
9 Elliott's concern. We don't want -- Jim Nolan is the  
10 only guy at IBC who can see that stuff.

11 MR. MUST: On behalf of Multiplan, may I be  
12 heard?

13 THE COURT: Sure.

14 MR. MUST: I represent Multiplan, and I  
15 incorporate Aetna's policy with respect to the documents  
16 for IBC.

17 But one point of clarification that I just may  
18 be misreading and it may render one of our motions moot.

19 We also have subpoenas from Chester County  
20 Hospital asking for all of our contracts with other  
21 hospitals in the area, as well as our strategic business  
22 plan.

23 As I read 10b of the protective order, I'm not  
24 sure, will anybody from Chester see that or just counsel  
25 and the consultants?

1 MR. OLSHIN: It's only Mr. Vanore who is in a  
2 basic position, although it may be another corporate --  
3 Paul Vanore is sort of our Mr. Nolan under this consent  
4 that Mr. Diamond has put forward. And we originally had  
5 agreed that Mr. Vanore would be the only person at  
6 Chester County who would have access to the IBC  
7 information, but he would be restricted from certain  
8 activities related to IBC in terms of renewal,  
9 continuation, commencement of any contracts. And that  
10 would be I guess similar for any other insurer.

11 THE COURT: All right. Does that specificity  
12 help?

13 MR. MUST: Well, it helps. But when I looked  
14 at this, it talked about contracts negotiated by  
15 defendant. And I wasn't sure if Mr. Vanore only came in  
16 the loop on other types of documents or on documents  
17 where my client has negotiated with other hospitals, and  
18 my understanding is that he would. So, it's the same  
19 issue on both sides with respect to in-house people  
20 seeing the documents from my perspective, from  
21 Multiplan's perspective.

22 Thank you, your Honor.

23 THE COURT: Sure. Okay.

24 MS. DAVIES: Your Honor --

25 THE COURT: Yes.

1 MS. DAVIES: My name is Sarah Davies and I'm  
2 here on behalf of Coventry Health Care of Delaware.

3 And, your Honor, I think our proposal was  
4 somewhat similar to the other insurers, although not as  
5 complex. We wouldn't have an objection to Mr. Vanore  
6 and Mr. Nolan looking at documents that are highly  
7 confidential with the exception of the rate information,  
8 which is extremely sensitive, extremely competitive.

9 We would propose that that information only be  
10 seen by outside counsel and by the experts. That's  
11 typical in these kinds of cases. In fact, Coventry in  
12 another litigation is bound by the same kind of  
13 confidentiality restriction, and in-house counsel cannot  
14 see the reimbursement rates of other parties.

15 So we would respectfully request that only  
16 outside counsel and the experts be allowed to see the  
17 rate information, and the other highly confidential  
18 information we would have no objection to Mr. Vanore and  
19 Mr. Nolan reviewing.

20 THE COURT: Okay.

21 MS. GUMMER: Briefly, Katie Gummer on behalf  
22 of Health Net.

23 We are coming into this a little later than  
24 some of the other folks. I don't know who the in-house  
25 folks are that they are talking about using, why they

1 have chosen them, what their roles are in the company.

2 So I think at a minimum, if your Honor is  
3 letting those folks see our materials, we should know  
4 more about them, we should have an affidavit, or  
5 something at least on record explaining --

6 THE COURT: What would you like to know about  
7 them?

8 MS. GUMMER: Right now, I don't know.

9 THE COURT: What would you like to know?

10 THE COURT: I would like to know what their  
11 positions are with the company, how long they have been  
12 with the company, what decision-making functions they  
13 have of any kind, why they were selected to fulfill  
14 these roles, what their educational backgrounds are, who  
15 they report to within the company.

16 I would like to be in a position to come to  
17 some conclusion as to whether or not they are truly  
18 appropriately limited in what they do to fulfill this  
19 role of looking at these highly confidential documents.

20 THE COURT: All right. Well, just for our  
21 purposes here -- and I don't mean to get carried away  
22 with lengthy affidavits or something -- introduce your  
23 representatives to all collectively if you would, who  
24 are they, would do they do, how long they have been  
25 there, just in terms of this room and this record that

1 we are making.

2 MR. OLSHIN: Judge, I will try to do that.

3 I will have to say as a caveat, this is the  
4 first time this issue with respect to Mr. Vanore has  
5 ever been mentioned to me as long as these discussions  
6 have taken place.

7 But Mr. Vanore basically is a person who does  
8 not have anything to do with the negotiation of rates.  
9 He basically is the controller of the hospital who  
10 basically was selected for the sole purpose of really  
11 advising us of what some of these issues mean in terms  
12 of what do these various bundles of rates mean. But he  
13 is not a negotiator of rates. He doesn't get involved  
14 with insurers in the negotiation or removal or  
15 continuation of contracts. That's handled by three  
16 other people who are not allowed to see the information.  
17 And that's why Mr. Vanore was selected.

18 THE COURT: He has been with the hospital how  
19 long?

20 MR. OLSHIN: I have to believe in excess of 10  
21 years probably.

22 THE COURT: Okay.

23 MR. OLSHIN: It's a big institution, but not  
24 as big as IBC. There is a core group of people, and I  
25 believe Mr. Vanore has probably been there 10 years in

1 the capacity as essentially the controller.

2 THE COURT: And he reports to?

3 MR. OLSHIN: He reports to I believe Mr.

4 Flickinger who is the vice president, executive vice  
5 president. And I assume that he probably reports at  
6 times to the president, Mr. Pepper.

7 THE COURT: Okay.

8 MR. DIAMOND: Your Honor, Mr. Dianno who knows  
9 Mr. Nolan will describe him for the court. I would  
10 point out just as a preface, I respectfully suggest that  
11 whatever his duties, it doesn't matter as long as he  
12 takes the affidavit to the effect -- or we represent to  
13 the effect that he will be barred from competitive  
14 decision-making going forward, but I will be --

15 THE COURT: I agree. But we will go ahead.

16 MR. DIANNO: Mark Dianno, senior counsel for  
17 IBC.

18 Joe Nolan is a vice president and controller  
19 for Independent Blue Cross who answers directly to John  
20 Foose who is the chief financial officer.

21 His main duties include preparation of the  
22 audited financial statements. He also is responsible  
23 for preparing our federal and state filings, our tax  
24 filings, some of our insurance blanks that have to be  
25 filed with the insurance department. He is also



1 responsible for accounts receivable, cash in disbursing,  
2 things of that nature.

3 He is specifically not involved in any type of  
4 rate negotiation for the hospital or other health care  
5 provider contracting.

6 THE COURT: Okay. And he has been with the  
7 company how long?

8 MR. DIANNO: I believe over 10 years with Blue  
9 Cross.

10 THE COURT: All right.  
11 Will that suffice?

12 MS. GUMMER: I appreciate that, but I don't  
13 see why they would object to simply putting that  
14 information in an affidavit, including how they are  
15 limited on a going forward basis if in fact the court is  
16 going to grant the request to have those --

17 THE COURT: Well, the affidavit does limit --

18 MR. OLSHIN: Well, the protective order says  
19 it.

20 THE COURT: Yeah.

21 MR. OLSHIN: It says that Mr. Vanore cannot be  
22 involved in renewal, continuation or commencement of  
23 contracts with respect to any other insurer to year  
24 2005.

25 MR. OLSHIN: I said IBC, and by extension by

1 agreement to the other insurers, and is also required to  
2 execute --

3 THE COURT: We will make that change.

4 MR. OLSHIN: He is also required to execute  
5 exhibit B to the protective order if and when he is  
6 shown any confidential rate information.

7 MS. GUMMER: And that isn't in there with  
8 respect to Mr. Nolan.

9 MR. DIAMOND: But the order we have given your  
10 Honor would keep him from competitive decision-making  
11 and he would have to sign exhibit B. I don't see a need  
12 for an affidavit.

13 THE COURT: We can live with what we have  
14 here.

15 MS. GUMMER: With respect to Mr. Vanore, I  
16 guess it is being raised because the way I read the  
17 protective order, and apparently the way some of my  
18 colleagues read the protective order, is that no one at  
19 Chester County would see these materials except for  
20 Chester County Hospital. So I think that is a new  
21 issue. And counsel has indicated they would intend to  
22 have Mr. Vanore look at our documents and he -- as well  
23 as IBC's documents, and that is news to us.

24 THE COURT: Okay.

25 MS. GUMMER: Thank you, your Honor.

1 THE COURT: Before leaving this, is there  
2 anyone else that would speak to this issue?

3 MR. OLSHIN: Judge, I'm sorry. There is one  
4 housekeeping issue. I think in the papers there is  
5 mention of returning some information.

6 THE COURT: Okay.

7 MR. OLSHIN: And that has been taken care of.  
8 And I wanted to mention that, that the material was  
9 returned so that there is no longer an issue before the  
10 court.

11 THE COURT: All right. In terms of still our  
12 protective order, how about Aetna? Did I hear if Aetna  
13 -- are they here?

14 MR. OLSHIN: That was Mr. Elliott.

15 THE COURT: What do you say about Duane Morris  
16 and inside/outside and Mr. Loder?

17 MR. ELLIOTT: I think that the proposals by  
18 plaintiff to the protective order satisfy our concerns  
19 about that. If it's just going to be the people who, at  
20 Duane Morris, who have access aren't going to be  
21 involved with any kind of work of negotiating rates,  
22 kind of the same distinction they have for IBC, that  
23 satisfies the requirements.

24 MR. DIAMOND: Your Honor, the Aetna order,  
25 although it's not argued in their papers, the Aetna

1 order would limit disclosure of the insurance companies  
2 documents only to Obermayer. There is no mention of  
3 Simon, and outside counsel is outside counsel.

4 THE COURT: Yeah. Outside is outside.

5 THE COURT: All right.

6 How about -- and again, if any of you that  
7 are here as intervenors don't have any interest in the  
8 rest of these issues, certainly you are free to move on,  
9 but we are happy to have you.

10 All right. How about the geographic scope --  
11 which is where I'm taking this now -- in terms of  
12 plaintiff's motion to compel?

13 MR. DIAMOND: Your Honor, that is,  
14 respectfully, that's a sealed motion. I would request  
15 that the insurers be --

16 THE COURT: All right. Thank you. Good I  
17 didn't say more.

18 MR. ELLIOTT: Your Honor, if I may. We  
19 discussed it before, and it doesn't involve any of our  
20 confidential and proprietary information apparently. If  
21 we could get a statement to that effect on the record

22 MR. OLSHIN: This motion is directed to IBC  
23 only.

24 THE COURT: Okay.

25 MR. MACLAY: To clarify something else. To

1 the extent that Mr. Vanore's ability to accept documents  
2 is established, and to the extent he is IBC's  
3 controller, we would request that it's made clear in  
4 that one-page order there is a period of time,  
5 potentially three years, in which he cannot return to  
6 competitive decision-making, and representative not  
7 only by him or --

8 THE COURT: We had 2005, did we not, on the  
9 IBC, and your names will will be included.

10 MR. OLSHIN: Respecting the renewal or  
11 commencement of any contract.

12 MR. MACLAY: Although the reason for the time  
13 period is that when IBC's contracts run out. I do not  
14 know that all of Aetna's contracts run out at the same  
15 time. So I would ask a slightly shorter period. It  
16 just precludes potential problems. It wasn't briefed.

17 MR. ELLIOTT: We did add that as a footnote.

18 MR. OLSHIN: It is three years, your Honor, or  
19 two years at this point. It seems to me I think in the  
20 Ball Memorial case there was a period of 18 months,  
21 so this is even more expansive than that.

22 THE COURT: All right. Well, we will rule on  
23 that. And we look through the whole plan here --

24 MR. MACLAY: And also to say it for the  
25 record, I believe there is case law for the proposition

1 that before inside people can see -- and I think this  
2 actually extends to inside counsel -- that they're  
3 typically required to sign an affidavit, because  
4 otherwise it's unclear to me how a third-party insurer  
5 could proceed against IBC, for example, if in fact this  
6 person does have some competitive decision-making. It  
7 would be more clear if it were imported into the order.

8 (A group of people left the courtroom.)

9 THE COURT: I have two interns in the back if  
10 you are worried about who they are.

11 All right. Let's talk about Puerto Rico and  
12 some of those other places that there seems to be a  
13 interest in.

14 MR. FEINSTEIN: Good morning, your Honor.  
15 Richard Feinstein also representing the plaintiff.

16 With respect to that issue, your Honor we have  
17 attempted to propound a relatively narrow request for  
18 information about IBC's information outside the  
19 five-county area. It would be focused on only financial  
20 performance and the reasons for entering or exiting  
21 those other areas.

22 The reasons that we are seeking that document  
23 -- and let me state parenthetically the fact that that  
24 is not perfectly consistent with the geographic market  
25 in this case. I believe it's quite well established

EXHIBIT "J"

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHESTER COUNTY HOSPITAL	:	CIVIL ACTION
	:	NO. 02-2746
v.	:	
	:	
INDEPENDENCE BLUE CROSS,	:	
QCC INSURANCE COMPANY,	:	
KEYSTONE HEALTH PLAN EAST, and	:	
KEYSTONE MERCY HEALTH PLAN	:	

AFFIDAVIT OF JOSEPH F. NOLAN

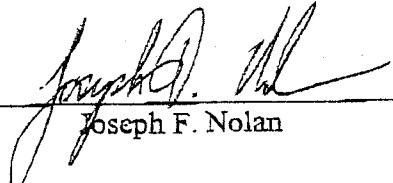
Joseph F. Nolan, being duly sworn according to law, deposes and says:

1. I, Joseph F. Nolan, am currently Vice President Controller of Independence Blue Cross.

2. I take this affidavit in accordance with the Order of July 7, 2003 of United States Magistrate Judge Charles B. Smith (the "Order").

3. In accordance with paragraph 10 J of the Protective Order, I agree that to the extent I am given access to any highly confidential information as defined by the Protective Order, I will only use the highly confidential information for purposes of the current litigation.

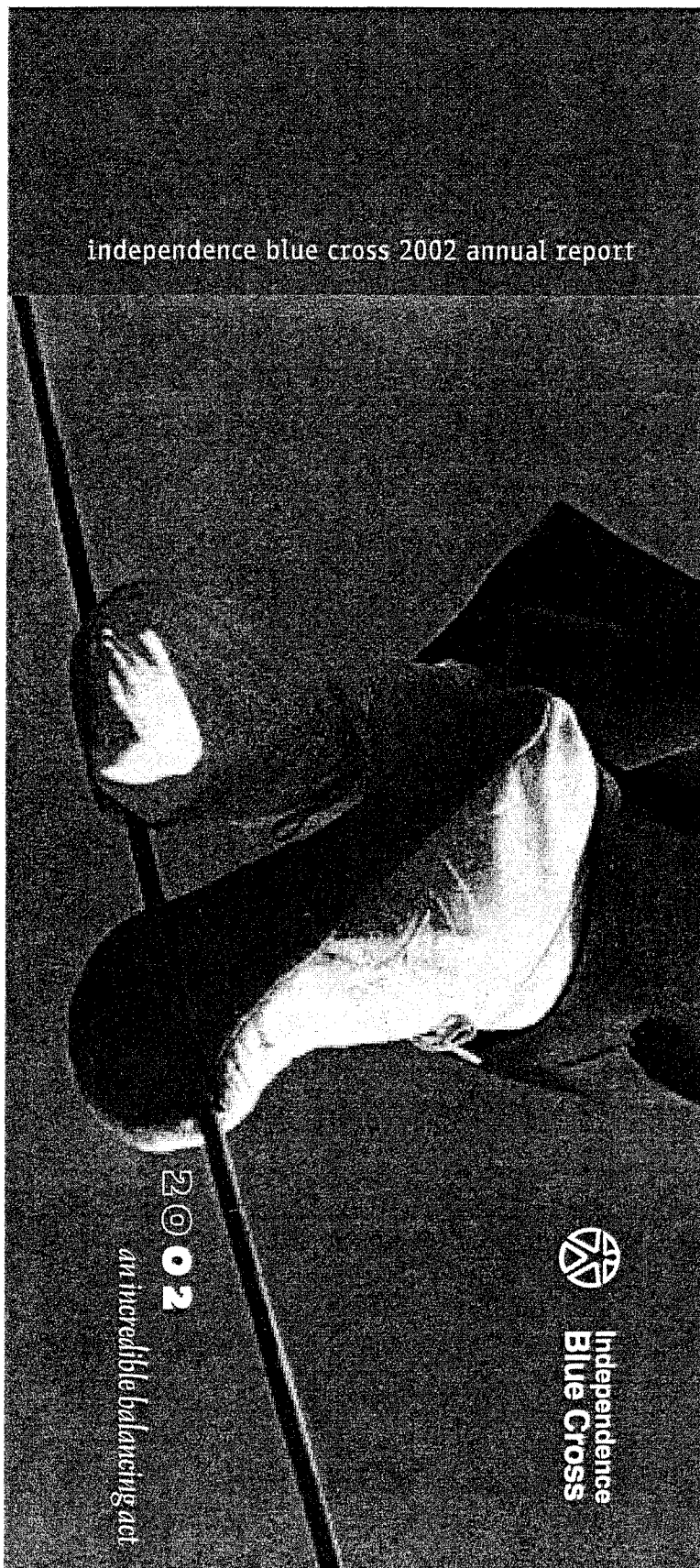
4. Further, I am not involved in "competitive decision making" as that term is defined in the Order and I agree not to be involved in participating or advising in any or all of Independence Blue Cross's decisions made in light of the highly confidential information I receive in this litigation about a competitor for a period of 2 years from the date of the Order.

  
\_\_\_\_\_  
Joseph F. Nolan

July 10, 2003



EXHIBIT "K"





## Corporate Mission

The corporate mission of Independence Blue Cross and its affiliates is to contribute to the good health of our members through financing the delivery of quality health care and allied services, effectively and efficiently managing the care provided to our members, and actively participating in shaping the evolution of the health care system.

The IBC Family of Companies will fulfill its overall corporate mission through the following:

- Maintaining long-term financial stability.
- Increasing the number of people, regions and markets served.
- Continuing our commitment to high-quality service to our partners.
- Partnering with a full spectrum of providers committed to improving the quality of the health care services delivered to our members.
- Assuring continued commitment to the social aspects of our mission.



## 2002: An Incredible Balancing Act

### Message from the President

Visit any department here at Independence Blue Cross, and ask someone how the company performed during 2002. Their answers tell the story of an impressive balancing act.

They will talk about IBC's 15th consecutive year of adding to our surplus, so that our members and providers can be assured that IBC will be able to pay their claims in the uncertain world we face today.

They will talk about new arrangements with hospitals, about 27 successfully renegotiated hospital contracts and about IBC's bold new incentive plan to reward hospitals for improving the quality of patient care.

They will recall how IBC responded to the medical malpractice insurance crisis and other cost pressures on physicians with the third major increase in fee schedules in 19 months. And they will stress that even such significant increases cannot begin to replace the urgent need for long-term tort reform.

They will explain—and perhaps boast just a little—about successes in technology and e-commerce, and dazzle you with Operations statistics, like this one: IBC handled more than 40.5 million claims, phone calls and enrollment transactions in 2002. That's 780,000 every week. That's six transactions every second.



G. Fred DiBona, Jr.  
President & CEO

## 2 Independence Blue Cross 2002 Annual Report

*...Social Mission  
that made possible  
the enrollment of  
more than 16,000  
uninsured adults  
during the first  
six months of  
Pennsylvania's new  
adultBasic program.*

They will speak of efforts to build a new model for managed care and point to their company's continued support for a Social Mission that made possible the enrollment of more than 16,000 uninsured adults during the first six months of Pennsylvania's new adultBasic program.

They will tell you that 2002 was a very good year for IBC. And they are right. The results were impressive.

They appear even more impressive when one considers the environment in which they were achieved. 2002 was a difficult year, peppered with challenges—stiff competition, an uncertain economy, continued escalation in medical costs, the malpractice crisis and a host of new government regulations and requirements.

It was a year in which the health care cost crisis worsened, forcing the number of uninsured Americans beyond 41 million. It was a year in which more and more employers responded to higher health care premiums by reducing benefits and shifting more costs to their workers. It was a year in which some media, class action attorneys and legislators created the myth that IBC's surplus was excessive, a position that was refuted by experts who understand that an insurance company needs a surplus sufficient to pay its members' claims in an emergency. And it was a year in which the skyrocketing cost of medical malpractice insurance threatened to deprive our members of good physicians who were deciding whether to abandon Pennsylvania or quit medicine altogether.



2002 was a good year and a difficult year, one that demanded each day that we successfully balance a host of competing interests and demands.

- Hospitals want higher reimbursements.
- Physicians want higher fees.
- Members want more benefits.
- Employers want lower premiums.
- Everyone wants the best in medical care, including the latest technology and new drugs.

Throughout 2002, IBC faced this balancing act and responded creatively and conscientiously, guided by one overriding goal:

**Keep the Promise.**

And we did. For another year, IBC kept the promise we make every day to our members—to be there when they need us the most.

As we look back at how we kept that promise in 2002, let us rededicate ourselves to that same overriding goal for 2003, recalling the millions of people who depend on us to achieve it.

  
G. Fred D'bona, Jr.  
President & CEO

#### 4 Independence Blue Cross 2002 Annual Report

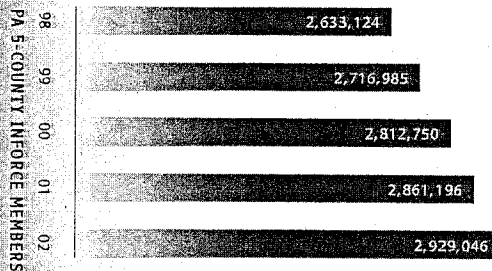
### Financial Performance

As we reach the end of 2002, Independence Blue Cross stands on solid financial ground.

For the 15th consecutive year, we added to our surplus—the funds set aside to pay unexpected claims and a crucial measure of an insurance company's financial stability. As of Dec. 31, 2002, IBC's statutory surplus again satisfied the requirements of the Pennsylvania Insurance Department and the national Blue Cross Blue Shield Association.

The increase in surplus was fueled by more than \$8.4 billion in underwriting revenue. Every underwriting target for the year was exceeded. Every line of insurance business for IBC and its affiliates—in Pennsylvania, New Jersey, Delaware, Jamaica and Puerto Rico—was profitable, contributing to our mission.

This is, indeed, an impressive financial model. Highly successful subsidiaries such as QCC Insurance Company, the company that offers Personal Choice®, our preferred provider organization product, and Keystone Health Plan East, our health maintenance organization product, produce the revenues which flow back to the "non-profit" parent, IBC, thereby enabling it to continue its mission as insurer of last resort.



The success of this performance, however, must be balanced with the enormity of the financial responsibility we bear on behalf of our members. During 2002, IBC paid nearly \$7.4 billion in claims on behalf of our members and customers—that's more than \$617 million in claims each month.

Therein lies a sobering fact about the health care crisis we face:

*Despite adding to our surplus in 2002, IBC actually has fewer days of claims in reserve than at the end of 2001.*

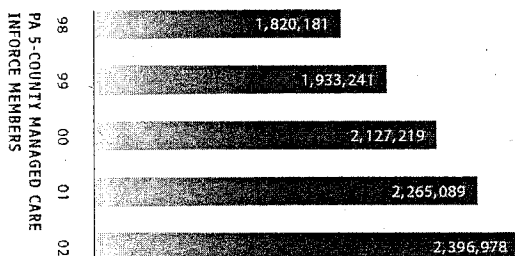
That's right—we ended 2001 with enough statutory surplus to pay our members' claims in an emergency for 42.9 days. We finished 2002 with only 40.4 days of claim payments in reserve.

Why? Because in 2002, we paid more claims, and far more expensive claims, on behalf of more members.

And so, even as our critics attack our surplus as excessive, we renew the vow we made to the Pennsylvania's Insurance Department during an informational hearing in September:

**We will add to our surplus again in 2003—because we take seriously our financial responsibilities to our members.**

It is part of the balancing act, part of keeping the Promise.





## 6 Independence Blue Cross 2002 Annual Report

*Over a 12-month  
period stretching  
back to late 2001,  
IBC successfully  
renegotiated 27  
hospital contracts.*

You also can see the balancing act at work in our relationships with hospitals and physicians during 2002.

Over a 12-month period stretching back to late 2001, IBC successfully renegotiated 27 hospital contracts. In each of those negotiations, IBC met the same difficult challenge: How to address the needs of hospitals while preserving our commitment to deliver access to health care to our members at the most affordable cost possible.

Yes, the balancing act is difficult.

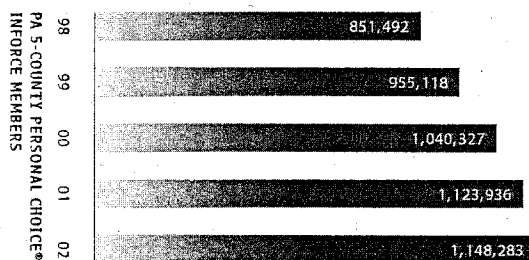
Physicians, too, faced increased financial pressures during 2002, partly as the result of skyrocketing premiums for medical malpractice insurance. As the crisis worsened, the threat grew that good physicians would retire or leave Pennsylvania. In December, IBC responded to the situation with the third increase in its physician fee schedule in just 19 months. With the latest increase, scheduled for March 2003, IBC's annual reimbursements to physicians will have risen by more than \$300 million since August 2001. While these significantly higher reimbursements will not pay for all of the increases in malpractice insurance premiums that physicians in the high-risk specialties are incurring, IBC and its customers cannot possibly shoulder such increases alone. Pennsylvania needs a long-term solution to the medical malpractice insurance crisis.

Looking forward to 2003, the challenge will grow.

Medical costs continue to significantly outpace the rate of inflation, and this region's utilization of medical services remains among the nation's highest. Consider that Pennsylvania has:

- The second highest rate of inpatient hospitalization among the nation's major markets (846 days per 1,000 insured residents).
- An outpatient surgery rate (84.2 per 1,000 insured residents) that is 44 percent higher than the U.S. average.
- A rate of physician visits (7.06 per insured resident per year) that is 27 percent higher than the U.S. average.

In recognition of the cost pressures that physicians and hospitals were experiencing, we assumed a leadership role during 2002 in the debate over how to address the medical malpractice insurance crisis. We lobbied for several reforms enacted during 2002, and pressed for Pennsylvania to follow the lead of states that have capped jury awards for non-economic damages. In addition, we took part in the public debate by placing newspaper ads and presenting opinion articles to generate public support for meaningful tort reform.



## 8 Independence Blue Cross 2002 Annual Report

*We have urged  
media, public officials  
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care institutions  
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for solutions.*

Similarly, we attempted to raise the level of public discussion on the cost crisis that threatens the stability of our health care system—and the need to address this crisis at once. In a variety of forums this year—from opinion articles written for newspapers to meetings with legislators to public appearances—we have urged media, public officials and other health care institutions to acknowledge the complexity of this crisis and to collaborate on the search for solutions.

## Membership

All of the ingredients were present in 2002 for IBC to experience declining enrollment in our products. Consider:

- ☛ Driven by continued double-digit inflation in medical costs, premiums rose again, and significantly, on most contracts.
- ☛ A stagnant local economy, which cost Philadelphia 24,000 private sector jobs in the second quarter of 2002 alone, caused employers to even more closely scrutinize health coverage costs.
- ☛ The competition pursued our business with a variety of new strategies and products.

Efforts by some media, legislators and class action lawyers to mischaracterize our surplus as "excessive" invariably led to questions about whether our premium increases were justified.

Despite this difficult marketing environment, IBC's membership continued to grow—and in 2002, the growth exceeded all expectations.

#### The highlights:

In the first quarter alone, IBC added almost 93,000 new members in Pennsylvania and more than 37,000 new members elsewhere in the U.S. It was one of the best first quarters in IBC history.

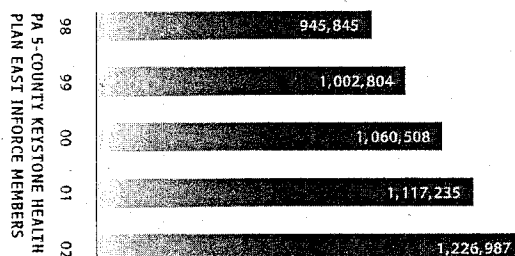
Enrollment in Pennsylvania exceeded 3 million members for the first time.

At year's end, total enrollment for the IBC Family of Companies stood at 4,053,389.

2002 represented the most successful gross enrollment year in the history of the Medicare+Choice (M+C) program. There were 49,891 new M+C members enrolled!

Keystone Health Plan East became IBC's top product, with a net gain of 110,000 members; Personal Choice\* added 19,000 members and we added 25,000 members in New Jersey.

Keystone HMO and Personal Choice\* exceeded 1 million members each.



Once again, the marketplace spoke loudly and clearly—more and more people bought IBC's products.

Despite these successes, however, an extremely difficult marketing environment still exists for 2003. Continued growth in medical expenses is causing premiums to increase, the economy continues to stagger and our competition is growing more aggressive each day.

## Technology

An important component of our effort to keep health insurance as affordable as possible is our determination to control our own administrative costs—one of the few factors in the health care cost equation that IBC can directly control. IBC's selling and administrative costs—as a percentage of revenues—are almost 15 percent below the national average for major health plans. Our 2003 plan calls for IBC to continue the progress we have made in recent years in significantly reducing the growth in administrative costs.

To do that, we must continue to invest in technology that changes the way we do business, reducing the paperwork and redundancy involved in managing health care coverage for millions of members. We are confident that the investments we made in 2002 are helping us to achieve those goals of reducing administrative costs and making it easier for our members and customers to do business with us.

Four strategic initiatives anchor our technology strategy:

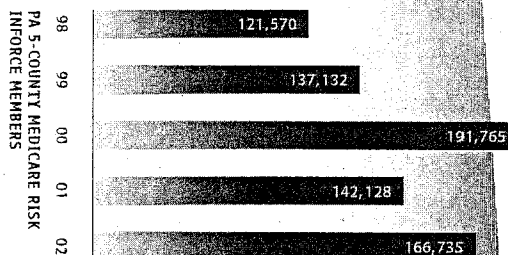
• **e-Commerce** 2002 was a year of accomplishment for our electronic business strategy. We introduced *ibxpress*® and our subsidiary, AmeriHealth, introduced *AmeriHealth Express*® to groups and members, and they responded by conducting

2.7 million transactions with us electronically.

Our goal in 2003 is to double that number.

We also continued to rollout our Navinet portal for providers, and by year's end, 30 percent of physician referrals and 35 percent of emergency room notifications were being submitted online to IBC.

• **MHS** During 2002, the records of more than 1 million Keystone members—that represents 23,000 groups—were transferred successfully to the new Power MHS system. As a result, our entire HMO business now resides on one common processing platform. The benefit? By year's end, over half of Keystone's claims were "auto-adjudicated"—received, processed and paid without being touched by human hands. By the end of 2003, our goal is to auto-adjudicate 70% of Keystone's claims.



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## The Customer Comes First

In 2002,  
we processed  
more than 40.5  
million transactions,  
four million more  
than in 2001.

Corporate Data Warehouse A critical part of managing our business is having accurate information. Toward that end, we met all of the milestones during 2002 that allowed us to populate our "warehouse" with three years of historical data on 70 million claims for Keystone members.

HIPAA During 2002, IBC met all deadlines for compliance with new federal privacy regulations concerning transactions and code sets, and is now capable of sending and receiving transactions from members and customers that comply with HIPAA regulations. Our 2003 efforts are focused on privacy and security compliance.

Earlier in this report, reference was made to the nearly \$7.4 billion in claims that were paid to meet the health costs incurred by our members during 2002. The administrative and operational effort required to pay those claims in an efficient and accurate manner is also enormous. In 2002, we processed more than 40.5 million transactions, four million more than in 2001. Those 40.5 million transactions included:

- 31.5 million claims processed
- 5.8 million member phone calls
- 3.1 million enrollment transactions

## Quality

2002 Annual Report Independence Blue Cross

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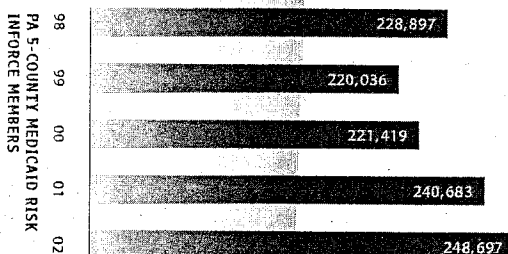
Or, to put it another way, that is:

- More than 3.3 million transactions a month
- nearly 780,000 a week
- more than 162,000 per day
- nearly 21,600 per hour
- more than 360 a minute
- and 6 in every second

The marketplace was not alone in reaffirming the quality of our products in 2002. IBC again earned the highest possible rating by the National Committee for Quality Assurance (NCQA) for its commercial and Medicare HMO and PPO products.

NCQA is a nationally recognized, independent organization dedicated to measuring the quality of America's managed care plans, preferred provider organizations and other health-related organizations.

In its evaluation, the NCQA gave Keystone a near-perfect score and a designation of "Excellent." It marked the fourth consecutive time that Keystone has received the NCQA's top accreditation for both its Commercial and Medicare product lines. Personal Choice® was awarded





"Full" accreditation for both its commercial and Medicare products for the second consecutive time. Personal Choice® is the only PPO plan in Pennsylvania to earn NCQA's highest rating and one of the first in the nation to do so.

Also during 2002, IBC launched an important new initiative designed to improve the quality of hospital care for our members.

Our new Hospital QIPS (Quality Incentive Payment System) is designed to provide a financial incentive to hospitals for enhanced quality of care and improved patient safety. Generally, under the program, hospitals agree to base part of their annual rate increases on their performance against agreed-upon quality parameters, such as readmission and mortality rates, nurse-to-patient ratios or installation of

computerized physician order entry systems to reduce prescription errors.

Throughout 2002, hospitals whose contracts were due for renegotiations were offered the opportunity to take part in the Hospital QIPS program. By year's end, a total of 15 hospital contracts included Hospital QIPS, and other hospitals expressed interest for a later time.

In addition, IBC collaborated with the Delaware Valley Healthcare Council (DVHC) on a project to enhance medication safety at area hospitals. IBC contributed \$750,000 to DVHC's Health Care Improvement Foundation to support the completion of DVHC's Regional Medication Safety Program for Hospitals, which has been recognized as one of the top five collaborative patient safety programs in the United States.

Our involvement with the good health of our members extended into many other areas:

• More than 166,000 newborn, pediatric and adolescent immunization reminders were sent to members, reminding them of the immunizations their children require, from birth to their 13th birthdays. This includes more than 10,000 calls made to parents of 9-month-old children—a 2002 enhancement to our pediatric immunization program.

• More than 250,000 adult immunization reminders were sent to members 65 years of age and older, as well as members with medical conditions placing them at high risk for complications of influenza.

• 512,732 mammography birthday card reminders were sent to women 40 years of age and older.

• 256,348 female members received pap smear reminders under our cervical cancer prevention program.

• 119,977 calls were made to members 50 years of age and older without a record of having received a cholesterol screening within the past 5 years.

*Personal Choice®  
is the only PRO plan  
in Pennsylvania  
to earn NCQA's  
highest rating  
and one of the first  
in the nation to do so.*

**16** Independence Blue Cross 2002 Annual Report

*Almost \$4 million  
was paid to nearly  
27,000 members who  
...made at least 120  
visits in a year  
to their health club.*

☛ Almost \$4 million was paid to nearly 27,000 members who took advantage of our Fitness Reimbursement program and made at least 120 visits in a year to their health club.

☛ More than 28,000 mailings, which included educational materials and discount offers, were sent to enrollees in our Baby BluePrints® program.

Did these efforts make a difference in the lives of our members? Consider the communications we received last year:

☛ The mother of a baby with a genetic disorder wrote to say, "Who would have thought my insurance case worker would be the one person to help me the most during this whole ordeal? I did not, but I am most grateful...to Blue Cross for having her."

☛ The daughter of a member suffering from lung cancer expressed her appreciation for "all that you did to enable him to receive the care he needed to keep him comfortable and maintain his dignity."

"A member who spoke to two Member Services representatives found that "they are hardly the typical cookie cutter insurance person you expect to find on the other end of the phone. They're two exceptional people."

"A New Jersey woman diagnosed with ovarian cancer spoke with a Member Services representative and found that her fears "were greatly assuaged by her professionalism every time we spoke."

"A member who received assistance from Member Services to fill a prescription wrote to say, "I will never, ever forget your thoroughness, professional, thoughtful, caring way you listened to and acted on [my] plight. May God bless you."

## A Good Corporate Citizen

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In addition to the responsibility we accept on behalf of our members, Independence Blue Cross and its associates also take seriously our membership in the community we serve.

During 2002, IBC and its associates participated in the community in a variety of ways—from financially supporting hundreds of important community projects and causes to partnering with agencies and groups that share our desire to improve the quality of life in the region.

*...Independence  
Blue Cross and  
its associates also  
take seriously our  
membership in the  
community we serve.*

**18** Independence Blue Cross 2002 Annual Report

IBC joined with the Pennsylvania Medical Society and a number of other groups in a statewide campaign effort led by the Council for Affordable Quality Healthcare to raise public awareness about the overuse of antibiotics—which results in antibiotic resistance. The Centers for Disease Control and Prevention (CDC) estimates that more than 50 percent of all antibiotics prescribed are unnecessary.

Meanwhile, 88 percent of our associates participated in the United Way's "Be A Hometown Hero" campaign with more than \$1.8 million donated, including our corporate match.

In addition to their financial contributions to the United Way, many IBC associates volunteer their time and talents to the region's health, educational, civic and cultural programs.

During 2002, more than 900 "Blue Crew" volunteers (including associates and family members) donated 3,751 hours to the projects of 34 different agencies, including Habitat for Humanity, Philabundance, the National Adoption Center and United Cerebral Palsy.

Blue Crew volunteers traveled each month to MANNA, where they prepared meals for delivery to homebound HIV patients, and to the Ronald McDonald House in West Philadelphia, where they cooked for the families of patients at Children's Hospital.

IBC's sponsorships also have had an important impact on the life of this community. The Blue Cross\* Broad Street Run has become one of America's premier 10-mile races, and an important entry on the region's civic calendar of events. In 2002, more than 9,000 runners participated in the 23rd annual race. Also in 2002, we continued our support for the Urban League of Philadelphia and its critically important mission, and became involved for the first time in a lead role with Philadelphia Safe and Sound, a program dedicated to improving the health and well-being of at-risk children. IBC also continued to support the staff and students at Sheppard Elementary School, our official adopted school for the past six years. The relationship has provided for the initial purchase for school uniforms for all the students, turkeys for the

annual turkey trot, savings bonds for graduation day awards, School Fairs, support for Sheppard Stars/Good Skates Program at Blue Cross\* RiverRink, and volunteers for clean-up days and reading days.

As part of the Philadelphia Reads program, students from Sheppard traveled weekly to IBC's headquarters, where they worked with Blue Crew volunteer reading tutors. And in December, elves from Independence Blue Cross accompanied Santa on a visit to Sheppard to help distribute presents to children as part of The Giving Tree for Sheppard School, an associate-driven project here at IBC.

## 20 Independence Blue Cross 2002 Annual Report

*...the number of medical services provided by the Caring Foundation to underprivileged children since its founding in 1990 neared 1.5 million.*

In July of 2002, the Independence Blue Cross and Pennsylvania Blue Shield Caring Foundation for Children began a new chapter in its proud history of providing health care coverage to the uninsured. Working with the Commonwealth to administer the new adultBasic program for uninsured adults, the foundation helped more than 16,000 uninsured Pennsylvanians obtain health insurance coverage through Keystone Health Plan East. And the number of medical services provided by the Caring Foundation to underprivileged children since its founding in 1990 neared 1.5 million.

## New Approaches to Old Relationships

Looking back on 2002, it is clear that our business has changed dramatically. Additional legislative mandates, increased litigation and public opinion have combined to completely change the face of managed care. IBC must continue to evaluate new approaches to helping members manage their care—and to help control their health care costs.

Looking ahead to 2003, IBC will continue to expand and implement new approaches with members and providers, while preserving our responsibility to control costs whenever possible. We will expand our Hospital QIPS® program, which focuses on the quality of care a hospital offers our members. We also will introduce a major new initiative designed to help our

members manage the treatment of chronic illnesses and other significant health conditions. The Connections Health Management Program focuses on five diseases that, together, account for more than 50 percent of IBC's overall medical costs. Those diseases are: asthma, diabetes, congestive heart failure, chronic obstructive pulmonary disease and coronary artery disease. In addition, the program offers support for members facing decisions related to significant health conditions such as back pain, arthritis, prostate disease and breast cancer.

Through a system of coordinated interventions and communications for those members, the Connections Health Management Program has been shown to help people with chronic diseases avoid worsening complications of their conditions, and to help people make more informed decisions about their care.

As with Hospital QIPs, the Connections Health Management Program holds the potential to achieve that all-important balance—better care for our members and control of costs. After all, higher quality care not only benefits patients but also tends to be less expensive in the long run.



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*This work has helped Pennsylvania maintain one of the lowest rates of uninsured residents in the nation.*

New approaches such as these also could help IBC and the other participants in the health care system improve the relationships that for years have polarized discussions about health care reform. Indeed, if we are to find solutions to this cost crisis, all parties with an interest in health care's future must sit at the same table and seek solutions. The time for collaboration is now.

At risk is this: We are becoming a country in which more and more health care is being provided to fewer and fewer of our citizens. And unless we find a way to arrest this cost crisis, this tragic and divisive trend will continue.

Finding a solution to this crisis in health care costs is a crucial part of keeping the Promise we make to our members. For more than a decade, addressing the plight of uninsured adults and children has been the cornerstone of our Social Mission. This work has helped Pennsylvania maintain one of the lowest rates of uninsured residents in the nation. Still, much needs to be done if we are to provide quality, affordable health care coverage to as many residents of Southeastern Pennsylvania as possible, regardless of their means.

Meeting that goal is a huge challenge. Keeping our Promise to our members in 2002 also was a huge challenge.

But we kept our Promise in 2002, and we intend to keep it again in 2003.

Independence Blue Cross and Subsidiaries  
Consolidated Financial Summary, 2002

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Premiums	8,451,801
Claims Incurred	7,398,594
Investment Income	38,006
Taxes Paid	
Premium Taxes	42,916
Income Taxes	79,330
Total Taxes Paid	122,246
Net Income	120,171
Cash and Investments	1,981,151
Total Assets	3,175,211
Unallocated Reserves	893,240

\$ in thousands

**Board of Directors**

as of May 1, 2003

<b>Robert H. Young, Esq.</b> Chairman	<b>Salvatore J. Barbuto</b>	<b>Andrew L. Lewis, IV</b>
<b>Robert W. Sorrell</b> Vice Chairman	<b>Joseph A. Barilotti</b>	<b>Dan M. McGill, Ph.D.</b>
<b>G. Fred DiBona, Jr.</b> President and Chief Executive Officer	<b>Carol G. Carroll</b>	<b>Hon. Michael D. Marino</b>
	<b>William B. Christy</b>	<b>Phyllis L. Meke</b>
	<b>Edward S. Cooper, M.D.</b>	<b>William A. Murray</b>
	<b>Edward Coryell</b>	<b>Alan Paul Novak, Esq.</b>
	<b>A. Bruce Crawley</b>	<b>Deborah R. Parks</b>
	<b>Walter D'Alessio</b>	<b>Charles P. Pizzi</b>
	<b>John J. Dougherty</b>	<b>Henry H. Reichner, Jr.</b>
	<b>Patrick D. Finley</b>	<b>William R. Sautter</b>
	<b>Hon. Vincent J. Fumo</b>	<b>Gerald S. Segal, Esq.</b>
	<b>Dr. Vail P. Garvin</b>	<b>James C. Schwartzman, Esq.</b>
	<b>Patrick B. Gillespie</b>	<b>Frederick C. Tecce, Esq.</b>
	<b>Nicholas A. Giordano</b>	<b>Margery S. Wolf</b>
	<b>Warren P. Higgins</b>	<b>Christie W. Hastings</b> Director Emeriti
	<b>Anne Kelly King</b>	<b>Freda I. Millar</b> Director Emeriti
	<b>Hon. James F. Kenney</b>	
	<b>Thomas A. Leonard, Esq.</b>	

**Officers of the Corporation**

as of May 1, 2003

<b>G. Fred DiBona, Jr.</b> President and Chief Executive Officer	<b>Joseph A. Frick</b> Senior Vice President, Human Resources and Administration
<b>Christopher D. Butler</b> Chief Marketing Executive	<b>Richard J. Neeson</b> Senior Vice President
<b>Christopher Cashman</b> Senior Vice President, Corporate and Public Affairs	<b>Paul A. Tufano</b> Senior Vice President, General Counsel and Corporate Secretary
<b>John A. Daddis</b> Senior Vice President, Managed Care and Operations	<b>Michael A. Green</b> Senior Vice President, Processing and Information Services
<b>Robert J. Fastia</b> Senior Vice President and Assistant to the President	<b>Daniel C. Lyons, M.D.</b> Senior Vice President, Government Programs
<b>John G. Foos</b> Chief Financial Officer	<b>Robert A. McKeown</b> Senior Vice President

**Thomas F. Papalardo**

Senior Vice President,  
Finance/CO KRIPE

**Rosemary Park**

Senior Vice President,  
Underwriting and Rating

**I. Steven Udvarhelyi, M.D.**

Senior Vice President and  
Chief Medical Officer

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Senior Vice President,  
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Vice President,  
Business Systems  
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Vice President,  
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**Karen W. Eskridge**

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**Kathryn M. Farley**

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Processing Services

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**William Kerr, M.D.**

Vice President,  
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Vice President,  
Internal Audit and  
Corporate Compliance Officer

**Kathleen Lister**

Vice President,  
Corporate Communications

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**R. Scott Post**

Vice President,  
Marketing Administration

**Lynne Rothney-Kozlak**

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**Robert E. Sakles**

Vice President, Marketing

**Richard L. Snyder, M.D.**

Vice President, Quality Management

**William J. (Butch) Ward**

Vice President,  
Corporate and Public Affairs





**Independence  
Blue Cross**

1901 Market Street  
Philadelphia, PA 19103  
[www.ibx.com](http://www.ibx.com)

Independence Blue Cross offers products directly through its subsidiaries Keystone Health Plan East and QCC Ins. Co., and with Highmark Blue Shield—Independent licensees of the Blue Cross and Blue Shield Association.

EXHIBIT "L"

LAW OFFICES

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July 11, 2003

VIA FACSIMILE

The Honorable Charles B. Smith  
UNITED STATES DISTRICT COURT  
U.S. Courthouse, Room 3006  
601 Market Street  
Philadelphia, PA 19106

Re: Chester County Hospital v. Independence Blue Cross et al.  
Case No. 02-CV-2746

Dear Judge Smith:

I have enclosed a form of Order that both CCH and IBC ask the Court to enter to clarify Your Honor's July 7<sup>th</sup> Order in this matter. Under the Protective Order entered by Judge Padova, IBC in-house counsel were permitted to review all "highly confidential" documents; CCH Controller Vanore was permitted to review certain "highly confidential" documents. The insurance companies asked Your Honor to limit only who at IBC and CCH could review documents deemed highly confidential by the insurance companies. Under Your Honor's July 7<sup>th</sup> Order, it is no longer clear whether IBC in-house counsel and Mr. Vanore are permitted to review highly confidential documents that have nothing to do with the insurance companies.

The proposed clarification provides that the only individuals at IBC and CCH who may see third party insurer information are Messrs. Nolan and Vanore. It clarifies that Paragraph 10(b) of the Protective Order continues to govern who at IBC and CCH may see all other "highly

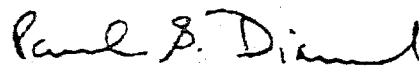
The Honorable Charles B. Smith

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July 11, 2003

confidential" documents that do not contain third party insurer information. This clarification is critical to both CCH and IBC; it in no way changes the substance of the July 7<sup>th</sup> Order respecting the protections afforded the insurance companies and their highly confidential documents.

Respectfully,



PAUL S. DIAMOND

PSD/jrm

cc: Honorable John R. Padova (facsimile.)  
Lewis R. Olshin, Esquire (facsimile)  
James C. Crumlish, III, Esquire (facsimile)  
Brian T. Must, Esquire (facsimile)  
Richard A. Feinstein, Esquire (facsimile)  
Kevin C. McClay, Esquire (facsimile)  
Katie A. Gummer, Esquire (facsimile)  
Robert W. Hayes, Esquire (facsimile)



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHESTER COUNTY HOSPITAL

v.

INDEPENDENCE BLUE CROSS,  
QCC INSURANCE COMPANY,  
KEYSTONE HEALTH PLAN EAST, and  
KEYSTONE MERCY HEALTH PLAN

NO. 02-CV-2746

ORDER

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2003, the Court clarifies its July 7, 2003 Order in this matter as follows:

- 10(j). The only IBC employee or officer to whom highly confidential information of insurers other than IBC may be disclosed is Joseph Nolan. The only Chester County Hospital employee or officer to whom highly confidential information of insurers other than IBC may be disclosed is Paul Vanore. Neither Mr. Nolan nor Mr. Vanore will be involved in "competitive decision making" for a period of two years from the date of this Order. For purposes of this paragraph, "competitive decision making" shall mean participating or advising in any or all of IBC's or Chester County Hospital's decisions made in light of information about a competitor. Both Mr. Nolan and Mr. Vanore shall submit an affidavit within five (5) days from the date of this Order stating that they shall use the highly

confidential information in no way other than for purposes of the current litigation. The restrictions in paragraph 10(b) otherwise remain unchanged.

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CHARLES B. SMITH  
UNITED STATES MAGISTRATE JUDGE